

**09/30/2020** at 02:17:37 PM

Clerk of the Superior Court  
By Marc David, Deputy Clerk

**DIVERSITY LAW GROUP, P.C.**

Larry W. Lee (State Bar No. 228175)

[lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)

Simon L. Yang (State Bar No. 260286)

[sly@diversitylaw.com](mailto:sly@diversitylaw.com)

515 South Figueroa Street, Suite 1250

Los Angeles, California 90071

Telephone: (213) 488-6555

Facsimile (213) 488-6554

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN DIEGO**

MARCOS BARRERA, as an individual and on  
behalf of all others similarly situated, and as a  
private attorney general,

Plaintiffs,

vs.

TRADEFORCE STAFFING SOLUTIONS LLC, a  
Colorado limited liability company;  
TRADEFORCE STAFFING SOLUTIONS OF  
COLORADO, LLC, a Colorado limited liability  
company; HRADVANTAGE, INC., an Oregon  
corporation; HUNTER CAPUTO dba THE  
CAPUTO GROUP, an Oregon individual; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2020-00034614-CU-OE-CTL

**CLASS AND REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE §§ 510, 558,  
1194**
- (2) VIOLATION OF LAB. CODE § 226(a);**
- (3) VIOLATION OF LAB. CODE §§ 201-203;**
- (4) VIOLATION OF BUS. & PROF. CODE  
§§ 17200 *ET SEQ.*; AND**
- (5) VIOLATION OF LAB. CODE §§ 2698 *ET  
SEQ.***

**DEMAND OVER \$25,000.00**

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Marcos Barrera, submits this Class and Representative Action Complaint against Defendants TradeForce Staffing Solutions LLC, TradeForce Staffing Solutions of Colorado, LLC, HRADVANTAGE, Inc., and Hunter Caputo dba The Caputo Group, and Does 1 through 50 (collectively, “Defendants”).

## INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 201-204, 221-224, 226(a), 510, 558, and 1194.<sup>1</sup>

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to pay all overtime due, failing to timely pay all wages due during employment or upon the separation of employment, and failing to provide accurate itemized wage statements.

3. Defendants routinely failed to pay all overtime wages due to Plaintiff and other non-exempt employees. Specifically, whenever Plaintiff and other non-exempt employees earned non-hourly compensation, including, for example, “PERDIEM” pay, Defendants did not include the non-discretionary compensation as part of their remuneration when calculating the regular rate of pay for overtime purposes. Moreover, Defendants also routinely failed to timely pay Plaintiff and other non-exempt employees all due wages or timely pay all due wages upon separation of employment. Defendants thus violate Sections 201-204, 510, 558, and 1194.

4. Defendants also routinely failed to provide accurate itemized wage statements to Plaintiff and other employees. First, as alleged above, Defendants failed to pay all overtime wages due and thus failed to provide Plaintiff and other non-exempt employees with itemized wage statements that show accurate overtime rates, gross wages earned, and net wages earned. Second, whenever Plaintiff and other non-exempt employees earned non-hourly compensation, including, for example, “PERDIEM” pay, Defendants also failed to provide itemized wage statements that showed the accurate

---

<sup>1</sup> Except as otherwise noted, all “Section” references are to the Labor Code.

1 number of units earned and applicable rate per unit. Instead, regardless of the number of units paid,  
2 Plaintiff and other non-exempt employees' wage statements always showed "1.00" unit paid with the  
3 gross amount of non-hourly compensation earned as the rate. Third, for Plaintiff and all other  
4 employees, non-exempt and exempt, Defendants also failed to provide wage statements that show the  
5 name and address of the legal entity that is the employer. Instead, the wage statements show  
6 "Tradeforce Staffing Solutions Adv – Lancaster," without any address listed (or show  
7 "HRADVANTAGE INC" and its address, "1225 NW MURRAY RD #206, PORTLAND, OR 97229").  
8 Defendants thus failed to provide accurate itemized wage statements to me and all other similarly  
9 aggrieved employees. Defendants thus violate Section 226(a).

10 5. Plaintiff is informed and believes that Defendants have engaged in, among other things,  
11 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and  
12 customs that knowingly deny its employees the above stated rights and benefits.

13 6. The policies, practices, and customs of Defendants resulted in unjust enrichment of  
14 Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of  
15 the Labor Code.

## 16 JURISDICTION AND VENUE

17 7. The Complaint seeks more than \$25,000.00 in relief. The Court has jurisdiction of  
18 Defendants' violations of Section 201-204, 226(a), 510, 558, and 1194, and of the Unfair Competition  
19 Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

20 8. Venue is proper as Defendants employed Plaintiff in San Diego, California.

## 21 PARTIES

22 9. Plaintiff began working for Defendants in or about November of 2019. During his  
23 employment as a solar installer, Plaintiff was paid on an hourly basis as a non-exempt employee. When  
24 Plaintiff was informed his employment was terminated on April 3, 2020, his final wages were not  
25 immediately made available. Even if Defendants had paid Plaintiff his wages immediately upon  
26 termination of employment, without unauthorized deduction, Plaintiff, like all other non-exempt  
27 employees, still would not have been paid all overtime wages due. Specifically, whenever Plaintiff  
28 earned non-hourly compensation, including, for example, "PERDIEM" pay, Defendants did not include

1 the non-discretionary compensation as part of his remuneration when calculating the regular rate of pay  
2 for overtime purposes. Furthermore, Defendants failed to timely pay all due wages upon separation of  
3 employment, and failed to issue wage statements that show either the name and address of the legal  
4 entity that is the employer or accurate overtime wage rates, gross wages earned, and net wages earned.  
5 Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this  
6 action in ways that have deprived him of the rights guaranteed by the Labor Code and the UCL.

7 10. Plaintiff is informed and believes that TradeForce Staffing Solutions LLC and  
8 TradeForce Staffing Solutions of Colorado, LLC were and are Delaware limited liability companies,  
9 that HRADVANTAGE, Inc. was and is an Oregon corporation, and that Hunter Caputo dba The  
10 Caputo Group was and is an Oregon individual. Plaintiff is informed and believes that at all times  
11 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,  
12 individuals, or partnerships that are and were licensed to do business and actually doing business in the  
13 State of California. Based upon all the facts and circumstances incident to Defendants' business,  
14 Defendants are subject to Section 201-204, 226(a), 510, 558, and 1194, and the UCL.

15 11. Plaintiff does not know the true names or capacities of the defendants sued herein as  
16 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are  
17 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true  
18 names and capacities are known. Plaintiff is informed and believes that each of said fictitious  
19 defendants was responsible in some way for the matters alleged herein and proximately caused the  
20 illegal employment practices, wrongs, and injuries complained of herein.

21 12. At all times herein mentioned, each of said Defendants participated in the doing of the  
22 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of  
23 the other Defendants, as well as the agents of all Defendants, and were acting within the course and  
24 scope of said agency and employment.

25 13. Under California law, Defendants are jointly and severally liable as employers for the  
26 violations alleged herein because they have each exercised sufficient control over the wages, hours,  
27 working conditions, and employment status of Plaintiff and the Class. Each Defendant had the power to  
28 hire and fire Plaintiff and the Class, supervised and controlled their work schedule and conditions of

1 employment, determined their rates of pay, and maintained their employment records. Defendants  
2 suffered or permitted Plaintiff and the Class to work or engaged them as to create a common law  
3 employment relationship. As joint employers of Plaintiff and the Class, Defendants are jointly and  
4 severally liable for the relief available to Plaintiff and the Class under the law.

5 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,  
6 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and the Class  
7 because Defendants have jointly required that Plaintiff and the Class perform work which is an integral  
8 part of Defendants' businesses and jointly exercised meaningful control over (i) the work performed by  
9 Plaintiff and the Class, (ii) their wages, hours, and working conditions, including the quantity, quality  
10 standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and the Class;  
11 and (iii) Plaintiff and the Class in general as a matter of economic reality in that Plaintiff and the Class  
12 were dependent on Defendants, who jointly reaped the benefits from noncompliance with statutory  
13 provisions governing their employments.

14 15. Plaintiff is informed and believes that at all times material hereto, each of said  
15 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,  
16 each of the other Defendants and was acting within the course and scope of such agency, employment,  
17 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by  
18 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or  
19 omissions of the acting Defendants. Plaintiff is further informed and believes that Defendants are alter  
20 egos of each other for additional reasons, including that TradeForce Staffing Solutions LLC and  
21 TradeForce Staffing Solutions of Colorado, LLC share the same principal place of business address of  
22 15660 East Hinsdale Drive, Centennial, Colorado 80112, and that HRADVANTAGE, Inc. and Hunter  
23 Caputo dba The Caputo Group share the same principal place of business (and owner and president  
24 addresses) of 1225 NW Murray Road #206, Portland, Oregon 97229.

25 16. Plaintiff is informed and believes that at all times material hereto each of the Defendants  
26 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the  
27 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in  
28 pursuance of, a joint venture, partnership, or common enterprise.

## CLASS ACTION ALLEGATIONS

17. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who at any time since April 6, 2016, earned overtime wages and “PERDIEM” pay or other non-hourly compensation in the same workweek (the “Overtime Class”), and (ii) all employees of Defendants in the State of California whose employment with Defendants ended at any time since April 6, 2017 (the “Late Pay Class”), and (iii) all current and former employees of Defendants in the State of California since April 6, 2019 (the “Wage Statement Class”). The Overtime Class, Late Pay Class and the Wage Statement Class are collectively referred to as the “Class.”

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated 510, 558, and 1194 by failing to pay all overtime due, and Section 226(a) by failing to provide accurate itemized wage statements.

19. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of (i) routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and other non-exempt employees by not accounting for all non-hourly compensation, including, for example, “PERDIEM” pay, (ii) routinely failing to timely pay all due wages upon separation of employment and (iii) routinely failing to provide accurate, itemized wage statements that show either the name and address of the legal entity that is the employer or accurate overtime wage rates, gross wages earned, and net wages earned.

1           21.     **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class  
2 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the  
3 Class suffered. As with other members of the Overtime Class, Plaintiff was paid on an hourly basis.  
4 Whenever Plaintiff earned non-hourly compensation, including, for example, “PERDIEM” pay,  
5 Defendants did not include the non-discretionary compensation as part of his remuneration when  
6 calculating the regular rate of pay for overtime purposes. Further, Defendants failed to timely pay  
7 Plaintiff all due wages upon separation of employment, and failed to issue wage statements that show  
8 accurate overtime wage rates, gross wages earned, and net wages earned. As with other members of the  
9 Wage Statement Class, Plaintiff was issued wage statements that failed to show the name and address  
10 of the legal entity that is the employer. Plaintiff thus is a member of the Class and has suffered the  
11 alleged violations of the Labor Code.

12           22.     The Labor Code is broadly remedial in nature. Its laws serve an important public interest  
13 in establishing minimum working conditions and requirements in California. These labor standards  
14 protect employees from onerous terms and conditions of employment or exploitation by employers who  
15 have superior economic and bargaining power.

16           23.     The nature of this action and the format of laws available to Plaintiff and members of the  
17 Class make the class action format a particularly efficient and appropriate procedure to redress the  
18 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate  
19 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit  
20 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and  
21 legal resources. Requiring each member of the Class to pursue an individual remedy would also  
22 discourage the assertion of lawful claims by employees who would be disinclined to file an action  
23 against their former or current employer for real and justifiable fear of retaliation and permanent  
24 damage to their careers at their current or subsequent employment.

25           24.     The prosecution of separate actions by individual members of the Class, even if  
26 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to  
27 individual members of the Class that would establish potentially incompatible standards of conduct for  
28 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a

1 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests  
2 of other members of the Class not parties to the adjudications. Further, the claims of the individual  
3 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering  
4 the concomitant costs and expenses.

5 25. Defendants' pattern, practice, and uniform administration of corporate policy in  
6 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will  
7 establish the rights of Plaintiff and the Class under Sections 201-204, 226(a), 510, 558, and 1194 and  
8 applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover unpaid  
9 overtime, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

10 26. This action is brought for the benefit of the Class, which is commonly entitled to a  
11 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class  
12 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

### 13 **FIRST CAUSE OF ACTION**

#### 14 **Violation of Labor Code §§ 510, 558, and 1194**

#### 15 **(By Plaintiff and the Overtime Class Against All Defendants)**

16 27. The preceding paragraphs are re-alleged and incorporated by this reference.

17 28. Section 510 requires an employer to pay employees overtime at a rate of one and one-  
18 half the employee's regular rate of pay for any work exceeding eight hours in a workday or forty hours  
19 in a workweek.

20 29. As a matter of policy and practice, Defendants permit Plaintiff and the Overtime Class  
21 to work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay.  
22 As a matter of policy and practice, Defendants routinely failed to pay all overtime wages due to  
23 Plaintiff and the Overtime Class. Specifically, whenever Plaintiff and the Overtime Class earned non-  
24 hourly compensation, including, for example, "PERDIEM" pay, Defendants did not include the non-  
25 discretionary compensation as part of their remuneration when calculating the regular rate of pay for  
26 overtime purposes. Defendants thus underpaid all overtime wages due to Plaintiff and the Overtime  
27 Class.

1           30.     Such a pattern, practice, and uniform administration of corporate policy is unlawful  
2 under Section 510 and the applicable IWC Wage Order, and entitles Plaintiff and the Overtime Class to  
3 recover the unpaid overtime, including interest thereon, liquidated damages or penalties, attorneys'  
4 fees, and costs of suit.

5           31.     Moreover, Section 201 provides if an employer discharges an employee, the wages  
6 earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that  
7 an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or  
8 her employment, unless the employee has given seventy-two (72) hours previous notice of his or her  
9 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.  
10 Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections  
11 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the  
12 same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204  
13 generally provides that wages are due and payable twice during each calendar month, on days  
14 designated in advance by the employer as the regular paydays.

15           32.     As alleged herein and as a matter of policy and practice, Defendants routinely underpaid  
16 overtime to Plaintiff and the Overtime Class. Based on Defendants' failure to correctly calculate  
17 overtime wages, Defendants routinely failed to timely pay Plaintiff and the Overtime Class all due  
18 wages during employment or to timely pay all due wages upon separation of employment. On  
19 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,  
20 of the mandates of the Labor Code as it relates to Plaintiff's allegations. By not timely paying Plaintiff  
21 and the Overtime Class all due wages during employment and all due wages upon the separation of  
22 employment, Defendants violated Sections 201-204 and owe applicable penalties, including waiting  
23 time penalties, to Plaintiff and other employees.

24           33.     Such a pattern, practice, and uniform administration of corporate policy is unlawful  
25 under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Overtime  
26 Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **Violation of Labor Code § 226(a)**

3 **(By Plaintiff and the Wage Statement Class Against All Defendants)**

4 34. The preceding paragraphs are re-alleged and incorporated by this reference.

5 35. Section 226(a) requires an employer to furnish to its employees itemized wage  
6 statements that show accurate information, including without limitation, the name and address of the  
7 legal entity that is the employer, all applicable hourly rates in effect during the pay period, gross wages  
8 earned, and net wages earned.

9 36. As a matter of policy and practice, whenever Defendants issued wage statements to  
10 Plaintiff and the Wage Statement Class, Defendants failed to provide accurate itemized wage  
11 statements that show the name and address of the legal entity that is the employer, in violation of  
12 Section 226(a). Specifically, Defendants provide wage statements that show “Tradeforce Staffing  
13 Solutions Adv – Lancaster,” without any address listed (or show “HRADVANTAGE INC” and its  
14 address, “1225 NW MURRAY RD #206, PORTLAND, OR 97229”).

15 37. Also as a matter of policy and practice, whenever Plaintiff and the Overtime Class  
16 earned non-hourly compensation, including, for example, “PERDIEM” pay, Defendants failed to  
17 provide accurate itemized wage statements listing accurate overtime wage rates, gross wages earned, or  
18 net wages earned, in violation of Section 226(a). As alleged herein, Defendants routinely underpay  
19 overtime to Plaintiff and the Overtime Class. As a result, and as a matter of policy and practice,  
20 Plaintiff and the Overtime Class are not provided with wage statements that show accurate overtime  
21 rates, gross wages earned, and net wages earned.

22 38. Also as a matter of policy and practice, whenever Plaintiff and the Class earned non-  
23 hourly compensation, including, for example, “PERDIEM” pay, Defendants failed to provide itemized  
24 wage statements that showed the accurate number of units earned and applicable rate per unit. Instead,  
25 regardless of the number of units paid, the wage statements always showed “1.00” unit paid with the  
26 gross amount of non-hourly compensation earned as the rate.

1           39.     Such a pattern, practice, and uniform administration of corporate policy is unlawful  
2 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,  
3 and costs of suit.

4                                   **THIRD CAUSE OF ACTION**

5                                   **Violation of Labor Code §§ 201-203**

6                                   **(By Plaintiff and the Late Pay Class Against All Defendants)**

7           40.     The preceding paragraphs are re-alleged and incorporated by this reference.

8           41.     Upon termination of employment, Section 203 provides that if an employer willfully  
9 fails to pay due and owing wages in accordance with Sections 201 and 202, then the wages of the  
10 employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages  
11 shall not continue for more than thirty (30) days. Section 201 provides if an employer discharges an  
12 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.  
13 Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours  
14 after an employee quits his or her employment, unless the employee has given seventy-two (72) hours  
15 previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages  
16 at the time of quitting.

17          42.     Despite being terminated by Defendants on April 3, 2020, Plaintiff was not paid his final  
18 wages on said date. Rather, Plaintiff was not paid until some days later. Moreover, Defendants  
19 deducted \$70 from said wages without Plaintiff's authorization.

20          43.     Defendants willfully failed to timely pay Plaintiff and the Class all their wages due or to  
21 timely pay Plaintiff and the Late Pay Class all their wages due upon the termination of their  
22 employment within the times prescribed by Sections 201-203 and are therefore subject to statutory  
23 penalties. On information and belief, Defendants were advised by skilled lawyers and knew, or should  
24 have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Plaintiff and  
25 other members of the Late Pay Class thus are entitled to recover applicable penalties, including  
26 waiting-time penalties for each day, up to a thirty (30) day maximum, pursuant to Section 203.

1           44.     Such a pattern, practice, and uniform administration of corporate policy regarding illegal  
2 employee compensation as described herein is unlawful and creates an entitlement to recovery by  
3 Plaintiff and the Class to applicable penalties, attorneys' fees, and costs of suit.

4                                   **FOURTH CAUSE OF ACTION**

5                                   **Violation of Business and Professions Code §§ 17200 *Et Seq.***

6                                   **(By Plaintiff and the Overtime Class Against All Defendants)**

7           45.     The preceding paragraphs are re-alleged and incorporated by this reference.

8           46.     Plaintiff is informed and believes that at Defendants have engaged and continue to  
9 engage in unfair and unlawful business practices in California by utilizing the employment policies and  
10 practices alleged herein in violation of Sections 510, 558, and 1194.

11          47.     As alleged herein, Defendants uniformly administer a corporate policy and practice of  
12 routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to  
13 Plaintiff and the Overtime Class. Defendants' utilization of such unfair and unlawful business practices  
14 constitutes unfair and unlawful competition and provides an unfair advantage over Defendants'  
15 competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum  
16 working condition standards and conditions due to them under the Labor Code and applicable IWC  
17 Wage Orders.

18          48.     Such a pattern, practice, and uniform administration of corporate policy regarding illegal  
19 employee compensation as described herein is unlawful and creates an entitlement to recovery by  
20 Plaintiff and the Overtime Class to full restitution of all monies withheld, acquired, or converted by  
21 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys'  
22 fees, and costs of suit.

23                                   **FIFTH CAUSE OF ACTION**

24                                   **Violation of Labor Code §§ 2698 *Et Seq.***

25                                   **(By Plaintiff and Aggrieved Employees Against All Defendants)**

26          49.     The preceding paragraphs are re-alleged and incorporated by this reference.

27          50.     Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698  
28 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this

capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 221-224, 226(a), 510, 558, and 1194 committed since April 6, 2019, against all aggrieved employees.

51. As alleged herein, Defendants violate Sections 201-204, 221-224, 226(a), 510, 558, and 1194 by (i) routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and other non-exempt employees by not accounting for all non-hourly compensation, including, for example, "PERDIEM" pay, (ii) routinely failing to pay all earned wages in a timely manner, and (iii) routinely failing to provide accurate, itemized wage statements that show either the name and address of the legal entity that is the employer, the number of piece-rate units earned and any applicable piece rate, accurate overtime wage rates, gross wages earned, and net wages earned. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

52. On or about September 11, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections 201-204, 221-224, 226(a), 510, 558, and 1194. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

53. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-204, 221-224, 226(a), 510, 558, and 1194 against all aggrieved employees for the alleged period.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for unpaid overtime, including interest thereon, and penalties pursuant to Sections 201-204, 510, 1194, and 1198, and for costs and attorneys' fees;

1           5.       Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs  
2 and attorneys' fees;

3           6.       Upon the Third Cause of Action for penalties pursuant to Sections 201-203, and for  
4 costs and attorneys' fees

5           7.       Upon the Fourth Cause of Action for restitution of all funds unlawfully acquired by  
6 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,  
7 and for costs and attorneys' fees;

8           8.       Upon the Fifth Cause of Action for penalties according to proof pursuant to Sections  
9 210, 226.3, 558, and 2699, and for costs and attorneys' fees;

10          9.       Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,  
11 226, 1197.1, and 2699, and Code of Civil Procedure section 1021.5; and

12          10.      For such other and further relief that the Court may deem just and proper.

13       DATED: September 30, 2020

DIVERSITY LAW GROUP, P.C.

14       By:   
15               Larry W. Lee  
16               Simon L. Yang  
17               Attorneys for Plaintiff