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CARLOS TENORIO HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

CARLOS TENORIO HERNANDEZ, an
individual,

Plaintiff,

v.

BELLA + CANVAS, LLC, a California limited
liability company; BARONHR WEST, INC., a
Delaware Corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. **21STCV22730**

COMPLAINT FOR DAMAGES FOR:

- 1. FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 226.7, 246);**
- 2. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**
- 3. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 4. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 5. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ);**
- 6. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND**
- 7. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §§226 *et seq.*, 1198.5).**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, CARLOS TENORIO HERNANDEZ, and for causes of action
against the Defendants and each of them, alleges as follows:

1 **JURISDICTION**

2 1. This Court is the proper court, and this action is properly filed in Los Angeles County,
3 because Defendants' obligations and liability arise therein, because Defendants maintain offices and
4 transact business within Los Angeles County, and because the work that is the subject of this action was
5 performed by Plaintiff in Los Angeles County.

6
7 **THE PARTIES**

8 2. Plaintiff, CARLOS TENORIO HERNANDEZ, is and at all times relevant hereto was a
9 resident of the County of Los Angeles, State of California.

10 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
11 hereto, Defendant BELLA + CANVAS, LLC (hereinafter referred to as "BELLA + CANVAS") was and
12 is a California limited liability company doing business at 825 South Vail Avenue, Montebello, CA
13 90640, in the County of Los Angeles, State of California.

14 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
15 hereto, BELLA + CANVAS owned and operated a clothing manufacturing and distribution company.

16 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendant BARONHR WEST, INC. (hereinafter referred to as "BARONHR") was and is a
18 Delaware corporation doing business at 8101 E. Kaiser Boulevard, Suite 130, Anaheim, CA 92808, in
19 the County of Orange, State of California.

20 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
21 hereto, BARONHR owned and operated a staffing agency company.

22 7. BELLA + CANVAS and BARONHR are collectively referred to as "Employers."

23 8. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
24 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
25 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
26 persons and are therefore subject to the jurisdiction of this Court.

27 9. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
28 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare

Commission Order No. 1-2001, and are each an “employer or other person acting on behalf of an employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

10. Employers and DOES 1-20, are collectively referred to as “Defendants.”

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as alleged hereinafter.

12. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendants.

13. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

14. Whenever and wherever reference is made in this complaint to any act or failure to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly and severally.

1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
7 but not limited to because:

8 a. Employers are completely dominated and controlled by DOES 1-20, who
9 personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden
10 and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish some other
11 wrongful or inequitable purpose.

12 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

15 c. Employers and DOES 1-20, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose.

18 d. Employers do not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. Employers at all times relevant hereto was, used by DOES 1-20 as a mere shell
23 and conduit for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of DOES
24 1-20. The recognition of the separate existence of Defendants would not promote justice, in that it would
25 permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code
26 and other statutory violations. The corporate existence of Employers and DOES 1-20 should be
27 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and
28 injustice to Plaintiff herein.

17. Accordingly, Employers constitutes the alter ego of DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employer by virtue of a joint enterprise, integrated-enterprise, or otherwise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

19. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, Employers or any of them, (1) there is an express or implied agreement of assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

20. On or about June 2017, BARON HR hired Plaintiff to work as a day laborer with BELLA + CANVAS. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff's termination of employment on or about November 9, 2020.

21. On or about October 12, 2020, BELLA + CANVAS became the sole employer of Plaintiff. Prior to October 12, 2020, Defendants were Plaintiff's joint employers, as Defendants exercised control of Plaintiff's wages, hours, and working conditions.

22. At all relevant times, Plaintiff worked approximately 5.5 days per week, Monday through Friday and approximately two (2) Saturdays per month, averaging approximately 60 hours per week.

23. At all relevant times, Defendants agreed to pay Plaintiff \$13.00 per hour.

1 24. Throughout Plaintiff's employment, Defendants required Plaintiff to work at least 10.1
2 hours on each day that Plaintiff worked. Thus, Plaintiff was entitled to take a second 30-minute meal
3 break and a third 10-minute rest break.

4 25. However, throughout Plaintiff's employment, Plaintiff was not permitted to, and not
5 advised of Plaintiff's right to take his third statutory 10-minute rest break on days he worked more than
6 10 hours.

7 26. Similarly, throughout Plaintiff's employment, Plaintiff was not permitted to, and not
8 advised of Plaintiff's right to take his second statutory 30-minute rest break on days he worked more than
9 10 hours.

10 27. Although Plaintiff was entitled to and did accrue sick time for which he was never paid,
11 Defendants violated Labor Code §§ 233, 245, and 246 because Defendants failed to provide Plaintiff with
12 paid sick leave.

13 28. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by collecting
14 and/or receiving from Plaintiff, part of his wages paid by Defendants.

15 29. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
16 for all hours worked paid at least twice during each calendar month to employees as required "by
17 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
18 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
19 Mar. 6, 2013).

20 30. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
21 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
22 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
23 action against Defendants, on behalf of himself and other current and former employees.

24 31. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23
25 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on
26 behalf of other aggrieved employees for other violations that he was not personally "aggrieved" by.

27 32. Defendants' conduct described herein was undertaken, authorized, and/or ratified
28 Defendants' officers, directors and/or managing agents, including, but not limited to and those identified

1 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
2 create policy for Defendants. The aforementioned conduct of said managing agents and individuals was
3 therefore undertaken on behalf of Defendants who further had advanced knowledge of the actions and
4 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
5 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
6 and designated herein as DOES 1 through 20, inclusive.

7 33. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
8 commissions, benefits and loss or diminution of earning capacity.

9 34. Plaintiff claims general damages for emotional and mental distress and aggravation in a
10 sum in excess of the jurisdictional minimum of this Court.

11 35. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
12 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
13 of Plaintiff's rights and in order to injure and damage Plaintiff.

14
15 **FIRST CAUSE OF ACTION**

16 **FOR FAILURE TO PAY WAGES DUE**

17 **LABOR CODE §§201, 226.7, 246, 510, 1182.12, 1194, 1194.2, 1197**

18 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

19 36. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 37. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
22 required by 8 Code of Regulations §11010, as set forth hereinabove. As alleged herein, Defendants
23 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week, failed to pay
24 Plaintiff wages for missed meal and rest breaks, and failed to pay Plaintiff for sick time.

25 38. Plaintiff accrued approximately 72 hours of sick time pursuant to Labor Code §246, and
26 Defendant failed to pay these wages, totaling approximately \$1,120.

27 39. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
28 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

1 40. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
2 proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to
3 recover such amounts, plus interest thereon, attorneys' fees and costs.

4 41. Labor Code §558(a) provides that any person acting on behalf of an employer who
5 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
6 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
7 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
8 to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting
9 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
10 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

11
12
13 **SECOND CAUSE OF ACTION**
14 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
15 **LABOR CODE §§226.7, 512**
16 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

17 42. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 43. Labor Code §512 requires employers to provide every employee with an uninterrupted
20 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours. Thus,
21 in a 10-hour workday, Defendants must provide a second 30-minute meal break.

22 44. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
23 rest period of not less than 10 minutes, for every period worked of four hours, or major fraction thereof.
24 Thus, if Plaintiff works more than 10 hours in a workday, Defendant must provide a third 10-minute rest
25 break.

26 45. In the four years last past, Plaintiff regularly worked in excess of ten hours per day, and
27 was thereby entitled to take three 10-minute rest periods and two 30-minute meal period on each day of
28 work.

1 46. Defendants failed and refused to provide Plaintiff with uninterrupted rest and meal
2 periods, and failed to compensate Plaintiff for missed or interrupted meal and rest periods, as required by
3 Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11010 and Industrial Welfare
4 Commission Order No. 1-2001, as follows:

5 a. From approximately June 2017 through November, 2018, Plaintiff was deprived
6 of his statutory 10-minute rest periods on approximately 900 days (5 days per week for 180 weeks); and

7 b. During the same time period, Plaintiff was deprived of his statutory 30-minute
8 meal periods on approximately 804 days (5 days per week for 180 weeks minus six days of meal penalty
9 payment).

10 47. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
11 Code of Regulations §11010 and Industrial Welfare Commission Order No. 1-2001. Consequently,
12 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
13 whichever is greater, for each day that Plaintiff was denied such meal and rest periods, calculated as
14 follows:

15 a. From approximately June 2017 through November, 2018, Defendants failed to
16 provide Plaintiff with an uninterrupted statutory rest period on approximately 900 separate days.
17 Consequently, Plaintiff is owed one hour of pay at \$13.00 for each day, or \$11,700.00, plus interest
18 thereon, for unpaid rest periods; and

19 b. During the same time period, Defendants failed to provide Plaintiff with an
20 uninterrupted statutory rest period on approximately 804 separate days. Consequently, Plaintiff is owed
21 one hour of pay at \$13.00 for each day, or \$10,452.00, plus interest thereon, for unpaid meal periods.

22 48. Thus, the total missed rest period compensation owing Plaintiff for this time period is
23 \$22,152.00.

24 49. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
25 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

26 50. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover the
27 amount of \$22,152.00, pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.
28

THIRD CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

51. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

52. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

53. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

54. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated.

55. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

56. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled

1 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
2 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
3 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
4 sick time, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
5 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

6 57. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
7 approximately 51 times during the one year preceding the filing of this complaint. Consequently,
8 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
9 amount of \$4,000.00, whichever is greater.

10 58. In addition thereto, for Defendant's 51 violations, Defendants are penalized \$250.00 for
11 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
12 in Labor Code §226.3 penalties of \$50,250.

13 59. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
14 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
15 applicable provisions, as well as attorneys' fees and costs.

16
17 **FOURTH CAUSE OF ACTION**
18 **FOR WAITING TIME PENALTIES**
19 **LABOR CODE §§201-203**

20 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

21 60. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
22 though set forth in full herein.

23 61. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
24 other compensation due immediately upon termination or within 72 hours of resignation, as required.
25 These wages refer to, at a minimum, sick wages, and meal and rest period compensation that Defendants
26 should have paid, but did not pay to Plaintiff during the term of Plaintiff's employment and which were,
27 at the latest, due within the time restraints of Labor Code §§201-203.

62. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-203.

63. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff is entitled to payment of Plaintiff's sick wages and meal and rest periods as previously pleaded herein, and more than \$4,095.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of \$136.50, inclusive of meal and rest period wages, and other wages.

64. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,095.00 in statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

FIFTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT

LABOR CODE §2699
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

65. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

66. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

67. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

68. On December 2, 2020, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). This Complaint include violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 246, 512, 551, 552, 2802, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

69. Here, Plaintiff's 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.

70. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

71. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

PENALTIES

72. Pursuant to 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 Labor and Workforce Development Agency ("LWDA") (or any of its departments, divisions, commissions, board agency 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 which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

a) As applicable, 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 one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, including those violations notated in Paragraph 68; and

b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for violations of Labor

Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid; and also an additional amount sufficient to recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550 for civil penalties, including for violations under Labor Code §§ 226.7, 512, 1030. Plaintiff is also able to collect an additional penalty to be distributed to the other aggrieved employees in an amount according to proof;

c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code § 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful or intentional violation, for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed, in addition to 25 percent of the amount unlawfully withheld;

d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25 percent of the amount unlawfully withheld;

e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;

f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

1 g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and
2 entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved
3 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
4 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
5 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
6 of thirty (30) days; and

7 h) As applicable, any and all additional applicable civil penalties and sums as provided by
8 the Labor Code and/or other relevant statutes.

9 73. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
10 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
11 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
12 to the aggrieved employees.

13 74. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
14 recovery of pre-judgment interest on all amounts recovered herein.

15 75. As a direct and proximate result of Defendants' California Labor Code violations as set
16 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
17 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
18 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
19 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
20 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, and 558.

21 76. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
22 recovery of pre-judgment interest on all amounts recovered herein.

23 77. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to
24 Labor Code §§2699(g)(1) and any other applicable statute.

1 **SIXTH CAUSE OF ACTION**

2 **FOR UNFAIR COMPETITION**

3 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

4 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

5 78. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
6 though set forth in full herein.

7 79. Defendants' violations of 8 Code of Regulations §11010, Industrial Welfare Commission
8 Order No. 1-2001, Labor Code §§201-203, 221, 226, 226.7, 245, 246, 512, and other applicable
9 provisions, as alleged herein, including Defendants' failure and refusal to pay rest and meal period
10 compensation, Defendants' failure to pay sick wages, Defendants' failure to provide timely and accurate
11 wage and hour statements, Defendants' collection of receipt of Plaintiff's wages, Defendants' failure to
12 pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to
13 maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in
14 violation of Business & Professions Code §§17200, et seq.

15 80. As a result of Defendants' unfair business practices, Defendants have reaped unfair
16 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
17 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

18 81. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
19 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
20 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
21 Plaintiff.

22
23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

25 **LABOR CODE §§226 et seq., 1198.5**

26 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

27 82. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 32, inclusive, as
28 though set forth in full herein.

1 83. Labor Code §226(c) requires an employer, within twenty-one (21) days of a written
2 request thereof, to inspect or receive a copy of an employee's records. Pursuant to Labor Code §226(f),
3 an employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

4 84. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
5 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
6 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

7 85. On November 13, 2020, Plaintiff made a written request to inspect or receive a copy of
8 her personnel and payroll records from Defendants, which Defendants received.

9 86. Defendants failed and refused to permit the inspection of the entirety of Plaintiff's
10 personnel and payroll records, and failed to provide the entirety of a copy of Plaintiff's personnel and
11 payroll records to her within the time required by Labor Code §§ 226 *et seq.*, 1198.5, or ever.

12 87. As a result of Defendants' failure and refusal to comply with Labor Code §§ 226, and
13 1198.5, Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00 for each violation,
14 totaling \$1,500 against each Defendant.

15
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
18 according to proof but estimated to be no less than \$1,000,000 as follows:

19 1. For a money judgment representing compensatory damages including lost wages,
20 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
21 together with interest on these amounts; for other special damages; and for general damages for mental
22 pain and anguish and emotional distress and loss of earning capacity;

23 2. For payment of wages pursuant to Labor Code §§ 233, 245, 246, in the amount of \$1,120,
24 plus interest;

25 3. For payment of meal and rest period compensation pursuant to Labor Code §226.7, in the
26 amount of no less than \$22,152;

27 4. For damages pursuant to Labor Code §221 in the amount according to proof;

28 5. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

1 6. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
2 less than \$50,250;

3 7. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
4 than \$4,095.00;

5 8. For statutory penalties pursuant to Labor Code §§ 226(f), 1198.5 in the amount of no less
6 than \$750.00 each, totaling \$1,500;

7 9. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
8 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
9 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
10 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

11 10. For civil penalties under Labor Code §210, in addition to and entirely independent and
12 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
13 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
14 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

15 11. For civil penalties under Labor Code §2802, in addition to and entirely independent and
16 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
17 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
18 each subsequent violation;

19 12. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
20 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
21 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
22 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
23 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

24 13. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
25 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
26 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
27 each subsequent violation;

1 14. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
2 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
3 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
4 until payment was/is made, up to a maximum of thirty (30) days;

5 15. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
6 Labor Code §1194(a), and/or Civil Code §3287;

7 16. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
8 any other applicable statute; and

9 17. For prejudgment interest on each of the foregoing at the legal rate from the date the
10 obligation became due through the date of judgment in this matter.

11 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
12 amount according to proof, as follows:

13 18. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
14 condemning Defendants' discriminatory practices;

15 19. For injunctive relief barring Defendants' discriminatory employment policies and
16 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

17 20. For injunctive relief compelling Defendants to report to federal and state authorities wages
18 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
19 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
20 this in an amount according to the proof;

21 21. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
22 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
23 compensation in accordance with the law;

24 22. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
25 any other basis;

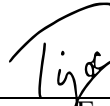
26 23. For post-judgment interest; and

27 24. For any other relief that is just and proper.
28

1 DATED: June 17, 2021

GUERRA & CASILLAS LLP

2
3 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
CARLOS TENORIO HERNANDEZ

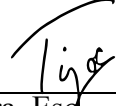
4
5
6 **JURY TRIAL DEMANDED**

7 Plaintiff demands trial of all issues by jury.

8
9 DATED: June 17, 2021

GUERRA & CASILLAS LLP

10
11 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
CARLOS TENORIO HERNANDEZ