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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

FRANCISCO RUIZ VELA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

KINGS CANYON WOOD PRODUCTS,
LLC, a California limited liability
company; and DOES 1 through 100,

Defendants.

Case No.: VCU285554

Amended as a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

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

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (3) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516);**
- (4) **FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*);**
- (5) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Francisco Ruiz Vela (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against; Kings Canyon Wood Products, LLC, a California limited liability
4 company; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under California Business & Professions
9 Code § 17200 *et. seq.*, Labor Code §§ 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194,
10 1194.2, 1197, 1198, and 2698 *et seq.*; and Industrial Welfare Commission Wage Order 1 (“Wage
11 Order 1”), in addition to seeking declaratory relief and restitution. This Complaint is brought
12 pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
13 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
14 this Court's jurisdictional minimum.

15 **VENUE**

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

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. During the four years immediately preceding
24 the filing of the Complaint in this action and within the statute of limitations periods applicable
25 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
26 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
27 herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor Code
28 §§ 201-204, 226 *et seq.*, 226.7, 510, 516, 558, 1182.12, 1194, 1194.2, 1197, and 1198; California

Business & Professions Code § 17200 *et seq.* (“Unfair Competition Law”); and Wage Order 1, which sets employment standards for the Manufacturing Industry.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business by manufacturing specialized bins for various agricultural products, and employed Plaintiff and other, similarly-situated non-exempt employees within the State of California and, therefore, were (and are) doing business in the State of California.

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

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

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting 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.

8. 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

1 members of the Classes.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff commenced employment with Defendants as a non-exempt employee, in
4 the position of forklift driver operator in August 2019 until his separation from the company on
5 July 8, 2020. Plaintiff typically worked five days a week, Monday through Friday. Between
6 August and October 2019, Plaintiff would work from 6:00 a.m. until 2:30 p.m. Plaintiff sustained
7 an injury on the job in October 2019 and was unable to work between October 2019 until April
8 13, 2020. Between April and July 2020, Plaintiff worked from 6:00 a.m. until 12:30 p.m.
9 However, as explained below, Plaintiff worked uncompensated outside of his scheduled hours on
10 a daily basis.

11 **Off-The-Clock Work**

12 10. Plaintiff and other non-exempt employees were required to, and encouraged by
13 Defendants to, arrive to the work site early to perform pre-shift work off-the-clock. This off-the-
14 clock work included, for example, the requirement that forklift drivers arrive to work at least ten
15 minutes before their regularly scheduled shifts in order to perform a forklift inspection and fill up
16 the forklift with gas. It was only after performing this work, which was necessary and required
17 by Defendants (as the warehouse would commence operation at exactly 6:00 a.m.), that Plaintiff
18 and other non-exempt employees employed as forklift drivers would be permitted to record their
19 hours for the shift.

20 11. Furthermore, while Plaintiff and other non-exempt employees would generally
21 work within the parameters of their pre-scheduled hours, at no point did Defendants actually track
22 their hours worked. Instead, Defendants would have Plaintiff and other non-exempt employees
23 write in the number of hours that they worked for the day on a physical sheet of paper after their
24 shifts had already ended. It could take up to ten minutes for Plaintiff and other non-exempt
25 employees to wait in line in order to write down their hours, all time which was unrecorded and
26 uncompensated by Defendants.

27 **Missed Rest Periods**

28 12. Plaintiff and the putative class were also not authorized and permitted to take all

1 required rest periods due to Defendants' rest period policies/practices, which fail to authorize and
2 permit all rest periods for every four hours worked, or major fraction thereof. At no point during
3 their employment with Defendants were Plaintiff and other non-exempt employees permitted to
4 exercise legally compliant rest periods. Furthermore, management never mentioned to Plaintiff
5 and other non-exempt employees that they were permitted by law to exercise their right to take
6 duty-free uninterrupted rest periods while they were working. The prevailing attitude of
7 management at the facility was that employees were not to take any breaks outside of the meal
8 periods and at no point did anyone ever exercise their right to do so. As a result of these
9 policies/practices, Defendants failed to authorize and permit Plaintiff and other non-exempt
10 employees off-duty rest periods that were completely free of employer control, in violation of
11 California law. On those occasions when Plaintiff and other non-exempt employees were not
12 authorized and permitted to take all legally-compliant rest periods to which they were entitled,
13 Defendants failed to compensate Plaintiff and other non-exempt employees with the required rest
14 period premium for each workday in which they experienced a rest period violation as mandated
15 by Labor Code § 226.7. Furthermore, upon information and belief during at least a portion of the
16 class period, Defendants maintained no payroll code or other mechanism for the payment of rest
17 period premium payments under Labor Code § 226.7 in the event that a legally compliant rest
18 period was not provided to their non-exempt employees.

19 **Inaccurate Wage Statements**

20 13. As a result of Defendants' failure to pay all minimum wages, overtime wages, rest
21 period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate
22 and deficient wage statements. Furthermore, Defendants have failed to comply with the
23 requirements as set forth in Labor Code § 226 *et seq* by not including the city and state of the
24 employer entity on the wage statements they issued to their employees. For example, in Plaintiff's
25 wage statements numbered 40946, 40916, 40867, and 40848, Defendants identify their address
26 as "7797 E. Kings Canyon". No city or state is included on any of these wage statements.

27 **Failure to Timely Pay All Final Wages**

28 14. As a further result of Defendants' failure to pay all minimum wages, overtime

wages, rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon his separation of employment from Defendants. Furthermore, Plaintiff has not received any compensation from Defendants representing the hours worked on his final day of employment with Defendants. Moreover, on information and belief, Plaintiff alleges that he and other discharged employees did not receive their final pay immediately upon discharge.

CLASS ACTION ALLEGATIONS

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

- a. The Minimum Wage Class consists of all Defendants' current and former non-exempt employees in California who were subject to Defendants' timekeeping systems and/or practices, during the four years immediately preceding the filing of the Complaint through the present.
- b. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who worked more than eight (8) hours per day and/or forty (40) hours per week and were subject to Defendants' timekeeping systems and/or practices during the four years immediately preceding the filing of the Complaint through the present.
- c. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift of 3.5 hours or more, during the four years immediately preceding the filing of the Complaint through the present;
- d. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, and Rest Period Class, who received a wage statement during the one year immediately preceding the filing of the Complaint through the present; and
- e. The Waiting Time Class consists of all Defendants' formerly employed members of the Minimum Wage Class, the Overtime Class, and Rest Period Class, who

separated from employment during the three years immediately preceding the filing of the Complaint through the present.

16. **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.

17. **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 violated the applicable Labor Code provisions including, but not limited to §§ 510 1194 by requiring work, including overtime work, and not paying for said work in accordance with the laws of the state of California;
- ii. 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;
- iii. Whether Defendants provided accurate, itemized wage statements to members of the Classes; and
- iv. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation from employment were lawful.

18. **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, rest period, wage statement, and payment of final wages policies/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.

1 19. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged
4 herein, Plaintiff, like the members of the Classes, was not paid for all hours worked, was not
5 authorized and permitted to take all required rest periods, did not receive rest period premium
6 wages when he was not provided compliant rest periods, did not receive accurate and itemized
7 wage statements, and was not paid all wages owed at time of separation of employment from
8 Defendants.

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

15 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
16 an important public interest in establishing minimum working conditions and standards in
17 California. These laws and labor standards protect the average working employee from
18 exploitation by employers who have the responsibility to follow the laws and who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment. The nature of this action and the format of laws available to Plaintiff
21 and members of the Classes make the class action format a particularly efficient and appropriate
22 procedure to redress the violations alleged herein. If each employee were required to file an
23 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
24 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
25 their vastly superior financial and legal resources. Moreover, requiring each member of the
26 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
27 employees who would be disinclined to file an action against their former and/or current employer
28 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent

1 employment. Further, the prosecution of separate actions by the individual class members, even
2 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
3 with respect to the individual class members against Defendants herein; and which would
4 establish potentially incompatible standards of conduct for Defendants; and/or legal
5 determinations with respect to individual class members which would, as a practical matter, be
6 dispositive of the interest of the other class members not parties to adjudications or which would
7 substantially impair or impede the ability of the class members to protect their interests. Further,
8 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
9 individual prosecution considering all of the concomitant costs and expenses attending thereto.
10 As such, the Classes identified in Paragraph 21 are maintainable as a Class under § 382 of the
11 Code of Civil Procedure.

12 **FIRST CAUSE OF ACTION**

13 **MINIMUM WAGE VIOLATIONS**

14 **(AGAINST ALL DEFENDANTS)**

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

16 23. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
17 right of employees to be paid minimum wages for all hours worked in amounts set by state law.
18 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
19 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
20 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
21 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform
22 their pay practices to the requirements of the law by failing to pay Plaintiff and the Minimum
23 Wage Class for all hours actually worked including, but not limited to, all hours they were subject
24 to the control of Defendants and/or suffered or permitted to work under the California Labor Code
25 and Wage Order 1.

26 24. California Labor Code § 1198 makes unlawful the employment of an employee
27 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
28 that an employer who has failed to pay its employees the legal minimum wage is liable to pay

1 those employees the balance of the unpaid wages as well as liquidated damages in an amount
2 equal to the wages due and interest thereon.

3 25. As a direct and proximate result of Defendants' unlawful conduct as alleged
4 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
5 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
6 entitled to recover economic and statutory damages and penalties and other appropriate relief as
7 a result of Defendants' violations of the California Labor Code and Wage Order 1.

8 26. Defendants' practice and uniform administration of corporate policy regarding
9 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
10 members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
11 liquidated damages, including interest thereon, statutory penalties, and attorneys' fees and costs
12 of suit according to California Labor Code §§ 204, 558, 1194, *et seq.*, 1197, 1198 and Code of
13 Civil Procedure § 1021.5.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

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

18 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
19 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
20 overtime hours worked, and provide a private right of action for the failure to pay all overtime
21 compensation for overtime work performed.

22 29. At all times relevant herein, Defendants were required to properly compensate
23 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
24 Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an
25 employee "one and one-half (1½) times [the] employee's regular rate of pay" for work in excess
26 of 8 hours per work day and/or in excess of 40 hours of work in the workweek. Wage Order 1, §
27 3 also requires an employer to pay an employee double the employee's regular rate of pay for
28 work in excess of 12 hours each work day and/or for work in excess of 8 hours on the seventh
consecutive day of work in the workweek. Defendants caused Plaintiff to work overtime hours,

1 but did not compensate Plaintiff or members of the Overtime Class at one and one-half times their
2 regular rate of pay for such hours.

3 30. The foregoing policies and practices are unlawful and create entitlement to
4 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
5 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
6 suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 1, and
7 Code of Civil Procedure § 1021.5.

8 **THIRD CAUSE OF ACTION**

9 **REST PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

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

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

15 33. As alleged herein, Defendants failed to authorize and permit Plaintiff and members
16 of the Rest Period Class to take all required rest periods.

17 34. The foregoing violations create an entitlement to recovery by Plaintiff and
18 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
19 owing, including interest thereon, as well as statutory penalties, civil penalties, and costs of suit
20 according to California Labor Code §§ 226.7, 516, 558, and Civil Code §§ 3287(b) and 3289.

21 **FOURTH CAUSE OF ACTION**

22 **WAGE STATEMENT VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

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

25 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
27 and the Wage Statement Class with accurate, itemized wage statements that included, among
28 other requirements, the correct legal address of the employing entity, accurate total gross wages

1 earned, rest period premiums, and total net wages earned in violation of Labor Code §226 *et seq.*

2 37. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
3 Class with complete and accurate, itemized wage statements resulted in actual injury, as said
4 failures led to, among other things, the non-payment of all of their rest period premiums, and
5 deprived them of the information necessary to identify discrepancies in Defendants' reported data.

6 38. Defendants' failures created an entitlement to Plaintiff and members of the Wage
7 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
8 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
9 pursuant to Labor Code § 226 *et seq.*

10 **FIFTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

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

14 40. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
15 an employer to pay all wages immediately at the time of termination of employment in the event
16 the employer discharges the employee or the employee provides at least 72 hours of notice of
17 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
18 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
19 employee's last date of employment.

20 41. Defendants failed to timely pay Plaintiff all of his final wages at the time of
21 termination, which include, among other things, underpaid minimum and overtime wages, and
22 rest period premium wages along with wages from his last day worked. Further, Plaintiff is
23 informed and believes, and based thereon alleges, that as a matter of uniform policy and practice,
24 Defendants continue to fail to pay members of the Waiting Time Class all earned wages at the
25 end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203.
26 Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203.

27 42. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
28 Time Class their earned wages upon separation from employment results in a continued payment

1 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and
2 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203,
3 plus reasonable attorneys' fees and costs of suit.

4 **SIXTH CAUSE OF ACTION**

5 **UNFAIR COMPETITION**

6 **(AGAINST ALL DEFENDANTS)**

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

8 44. Defendants have engaged and continue to engage in unfair and/or unlawful
9 business practices in California in violation of California Business and Professions Code § 17200
10 *et seq.*, by failing to pay Plaintiff and the Classes all overtime and minimum wages, provide all
11 required meal periods and failing to authorize and permit all required rest periods, and failing to
12 rest period premium wage payments, failing to furnish accurate, itemized wage statements, and
13 willfully failing to timely pay Plaintiff and members of the Waiting Time Class all final wages
14 upon separation of employment.

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

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

24 47. The acts complained of herein occurred within the last four years immediately
25 preceding the filing of the Complaint in this action.

26 48. Plaintiff was compelled to retain the services of counsel to file this court action to
27 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
28 of Defendants' current non-exempt employees, and to enforce important rights affecting the

1 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
2 which he is entitled to recover under Code of Civil Procedure § 1021.5.

3 **SEVENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(AGAINST ALL DEFENDANTS)**

6 49. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
7 fully set forth herein.

8 50. Defendants have committed several Labor Code violations against Plaintiff,
9 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
10 within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other aggrieved
11 employees, brings this representative action against Defendants to recover the civil penalties due
12 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
13 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
14 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
15 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
16 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
17 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
18 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
19 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
20 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

24 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
25 Wage Class, and other similarly aggrieved employees in violation of Labor
26 Code §§ 1182.12, 1194, 1194.2, and 1197;

27 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
28 earned overtime compensation in violation of Labor Code §§ 204, 510, 558,

1194, and 1198;

- c. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff, the Rest Period Class, and other similarly aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203; and
- f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174 and 1198.

51. On January 13, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 50 (a)-(f). The LWDA has not provided notice that it intends to investigate the violations, and therefore Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

- 1. For an order certifying the proposed Classes;
- 2. For an order appointing Plaintiff as representative of the Classes;
- 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
3 1197;

4 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

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

8 7. Upon the Fourth Cause of Action, for actual damages, statutory and civil penalties
9 pursuant to Labor Code § 226, *et seq.*;

10 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
11 203.;

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

16 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
18 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
19 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
20 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
21 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
22 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
23 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
24 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
25 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
26 each initial violation and \$200 for each subsequent violation per employee per pay period for
27 those violations of the Labor Code for which no civil penalty is specifically provided, based on
28 the following Labor Code violations;

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

12. On all causes of action, for attorneys' fees and costs as provided by Code of Civil Procedure § 1021.5 and all other applicable statutes; and

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

Dated: March 25, 2021

Respectfully submitted,
STANBURY BROWN LAW

By:

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

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

Dated: March 25, 2021

Respectfully submitted,
STANBURY BROWN LAW

By:

Daniel J. Brown
Ethan C. Surls
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On March 25, 2021 I served the documents listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 25, 2021 at Redondo Beach, California.



Daniel J. Brown

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SERVICE LIST

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