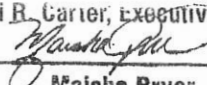


JUN 25 2021

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Attorneys for Plaintiff, ROSALINA ESTRADA DE TEQUE,
on behalf of herself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ROSALINA ESTRADA DE TEQUE, an
individual and on behalf of all others similarly
situated,

Plaintiff,

v.

R. J. ACQUISITION CORP. *d.b.a.* ADART
COMPANY a Nevada Corporation; JOSEPH
M. DEMARCO, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 21STCV11233

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. UNFAIR COMPETITION;
9. PENALTIES PER LABOR CODE § 210;
10. PENALTIES PER LABOR CODE § 226.3;
11. PENALTIES PER LABOR CODE § 558;
12. PENALTIES PER LABOR CODE § 1174.5;
13. PENALTIES PER LABOR CODE § 1197.1; and
14. PENALTIES PER LABOR CODE § 2699.

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff ROSALINA ESTRADA DE TEQUE ("Plaintiff"), on behalf of Plaintiff and all others similarly situated and aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against R. J. ACQUISITION CORP. *d.b.a* ADART COMPANY, and any of its respective subsidiaries or affiliated companies within the State of California ("ADART"), and JOSEPH M. DEMARCO ("MR. DEMARCO" and, together with ADART and DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against ADART and any of its respective subsidiaries or affiliated companies within the State of California and MR. DEMARCO an individual, as a proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

PARTIES

A. Plaintiff

3. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, packaging and shipping. Plaintiff is informed and believes, and based thereon alleges that Plaintiff worked for Defendants from approximately September of 1998 through approximately March of 2020.

1 **B. Defendants**

2 4. Plaintiff is informed and believes and based thereon alleges that defendant ADART
3 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
4 the laws of the State of Nevada and doing business in the County of Los Angeles, State of California.

5 5. Plaintiff is informed and believes and based thereon alleges that defendant MR.
6 DEMARCO is, and at all times relevant hereto was, an individual residing in California, as well as
7 owner or director for ADART, and DOES 1 through 100, as further defined below. Plaintiff is
8 further informed and believes and based thereon alleges that MR. DEMARCO violated, or caused
9 to be violated, the above-referenced and below-referenced Labor Code provisions in violation of
10 Labor Code section 558.1

11 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
12 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
13 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
14 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
15 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
16 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
17 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
18 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
19 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
20 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
21 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
22 include ADART, MR. DEMARCO, and any of their parent, subsidiary, or affiliated companies
23 within the State of California, as well as DOES 1 through 100 identified herein.

24 **JOINT LIABILITY ALLEGATIONS**

25 7. Plaintiff is informed and believes and based thereon alleges that all the times
26 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
27 representative, joint venture or co-conspirator of each of the other defendants, either actually or
28 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,

1 employment, joint venture, and conspiracy.

2 8. All of the acts and conduct described herein of each and every corporate defendant
3 was duly authorized, ordered, and directed by the respective and collective defendant corporate
4 employers, and the officers and management-level employees of said corporate employers. In
5 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
6 their said employees, agents, and representatives, and each of them; and upon completion of the
7 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
8 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
9 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
10 aforementioned corporate employees, agents and representatives.

11 9. Plaintiff is further informed and believes and based thereon alleges that MR.
12 DEMARCO violated, or caused to be violated, the above-referenced and below-referenced Labor
13 Code provisions in violation of Labor Code section 558.1.

14 10. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
15 unity of interest and ownership between Defendants, and each of them, that their individuality and
16 separateness have ceased to exist.

17 11. Plaintiff is informed and believes, and based thereon alleges that despite the
18 formation of the purported corporate existence of Pronto, and DOES 1 through 50, inclusive (the
19 "Alter Ego Defendants"), they, and each of them, are one and the same with MR. DEMARCO and
20 DOES 51 through 100 ("Individual Defendants"), and each of them, due to, but not limited to, the
21 following reasons:

22 a. The Alter Ego Defendants are completely dominated and controlled by the
23 Individual Defendants who personally committed the wrongful and illegal acts
24 and violated the laws as set forth in this Complaint, and who has hidden and
25 currently hide behind the Alter Ego Defendants to perpetrate frauds,
26 circumvent statutes, or accomplish some other wrongful or inequitable
27 purpose;

28 ///

- 1 b. The Individual Defendants derive actual and significant monetary benefits by
2 and through the Alter Ego Defendants' unlawful conduct, and by using the
3 Alter Ego Defendants as the funding source for the Individual Defendants'
4 own personal expenditures;
- 5 c. Plaintiff is informed and believes and thereon alleges that the Individual
6 Defendants and the Alter Ego Defendants, while really one and the same, were
7 segregated to appear as though separate and distinct for purposes of
8 perpetrating a fraud, circumventing a statute, or accomplishing some other
9 wrongful or inequitable purpose;
- 10 d. Plaintiff is informed and believes and thereon alleges that the business affairs
11 of the Individual Defendants and the Alter Ego Defendants are, and at all
12 relevant times mentioned herein were, so mixed and intermingled that the
13 same cannot reasonably be segregated, and the same are inextricable
14 confusion. The Alter Ego Defendants are, and at all relevant times mentioned
15 herein were, used by the Individual Defendants as mere shells and conduits
16 for the conduct of certain of their, and each of their affairs. The Alter Ego
17 Defendants are, and at all relevant times mentioned herein were, the alter egos
18 of the Individual Defendants;
- 19 e. The recognition of the separate existence of the Individual Defendants and
20 the Alter Ego Defendants would promote injustice insofar that it would
21 permit defendants to insulate themselves from liability to Plaintiff for
22 violations of the Civil Code, Labor Code, and other statutory violations. The
23 corporate existence of these defendants should thus be disregarded in equity
24 and for the ends of justice because such disregard is necessary to avoid fraud
25 and injustice to Plaintiff herein;

26 12. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
27 Defendants (and vice versa), and the fiction of their separate corporate existence must be
28 disregarded.

13. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Defendants, and each of them, are joint employers.

JURISDICTION

14. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

15. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because Defendants employ numerous Class Members in Los Angeles County.

16. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former employees of Defendants during the Civil Penalty Period.

17. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA allegations described herein is not required.

18. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

19. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

20. On or around March 18, 2021, Plaintiff provided written notice pursuant to Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

21. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the March 18, 2021 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

22. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action were tolled from April 6, 2020 until October 1, 2020.

FACTUAL BACKGROUND

23. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

24. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,

1 or some of them, in violation of California state wage and hour laws as a result of, among other
2 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular
3 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

4 25. For at least four (4) years prior to the filing of this Action and continuing to the
5 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
6 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
7 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
8 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
9 for such unprovided meal periods as required by California wage and hour laws.

10 26. For at least four (4) years prior to the filing of this action and continuing to the
11 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
12 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
13 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
14 California wage and hour laws.

15 27. For at least three (3) years prior to the filing of this action and continuing to the
16 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the
17 full amount of their wages owed to them upon termination and/or resignation as required by Labor
18 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
19 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

20 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
21 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
22 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
23 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
24 hours worked at each hourly rate; and other such information as required by Labor Code section
25 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with
26 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

27 29. For at least three (3) years prior to the filing of this action and continuing to the
28 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the

1 costs incurred in purchasing and/or using cellular phones for work-related purposes.

2 30. At all relevant times mentioned herein, Defendants have had a policy or practice of
3 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
4 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
5 Employees with the rates of pay and overtime rates of pay applicable to their employment;
6 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
7 name, address, and telephone number of the workers' compensation insurance carrier; information
8 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
9 under Labor Code section 2810.5.

10 31. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
11 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
12 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
13 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
14 all other Aggrieved Employees.

15 32. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
17 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
18 any calendar month shall be paid for between the 16th and 26th day of the month during which the
19 labor was performed, and labor performed between the 16th and the last day, inclusive of any
20 calendar month, shall be paid for between the 1st and 10th day of the following month."

21 33. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
23 and experience they obtained at Defendants for purposes of competing with Defendants, including,
24 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
25 a prospective employer, and from disclosing who else works at Defendants and under what
26 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
27 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
28

1 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
2 Code sections 232, 232.5, and 1197.5, subdivision (k).

3 34. Defendants had and have a policy or practice of preventing Plaintiff and/or other
4 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
5 to their managers or outside to private attorneys or government officials, among others, in violation
6 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
7 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
8 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
9 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
10 of Labor Code section 232 and 232.5.

11 35. Defendants had and have a policy or practice of preventing Plaintiff and/or other
12 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
13 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
14 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
15 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
16 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
17 economic liberty.

18 36. Plaintiff, on her own behalf and on behalf of Class Members, brings this action
19 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 227.3,
20 510, 512, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8, section
21 11010, seeking overtime wages, minimum wages, payment of premium wages for missed meal and
22 rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-related
23 expenses, failing to pay vested vacation time at the proper rate of pay, and other such provisions of
24 California law, and reasonable attorneys' fees and costs.

25 37. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
26 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
27 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
28 appropriate and effective means to prevent further violations, as well as all monies owed but

1 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
2 restitution of amounts owed.

3 38. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
4 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
5 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
6 Employees pursuant to PAGA.

7 **CLASS ACTION ALLEGATIONS**

8 39. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action
9 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current
10 and former non-exempt employees of Defendants within the State of California at any time
11 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice
12 of the class action is provided to the class (collectively referred to as "Class Members").

13 40. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)
14 to amend or modify the class description with greater specificity, further divide the defined class
15 into subclasses, and to further specify or limit the issues for which certification is sought.

16 41. This action has been brought and may properly be maintained as a class action under
17 the provisions of Code of Civil Procedure section 382 because there is a well-defined community
18 of interest in the litigation and the proposed Class is easily ascertainable.

19 **A. Numerosity**

20 42. The potential Class Members as defined are so numerous that joinder of all the
21 members of the Class is impracticable. While the precise number of Class Members has not been
22 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class
23 Members employed by Defendants within the State of California.

24 43. Accounting for employee turnover during the relevant periods necessarily increases
25 this number. Plaintiff alleges Defendants' employment records would provide information as to the
26 number and location of all Class Members. Joinder of all members of the proposed Class is not
27 practicable.

28 ///

1 **B. Commonality**

2 44. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 a. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay
5 all hours worked at a proper overtime rate of pay?
- 6 b. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to
7 pay for all other time worked at the employee's regular rate of pay and a rate
8 of pay that is greater than the applicable minimum wage?
- 9 c. Did Defendants violate Labor Code section 512 by not authorizing or
10 permitting Class Members to take compliant meal periods?
- 11 d. Did Defendants violate Labor Code section 226.7 by not providing Class
12 Members with additional wages for missed or interrupted meal periods?
- 13 e. Did Defendants violate applicable Wage Orders by not authorizing or
14 permitting Class Members to take compliant rest periods?
- 15 f. Did Defendants violate Labor Code section 226.7 by not providing Class
16 Members with additional wages for missed rest periods?
- 17 g. Did Defendants violate Labor Code sections 201 and 202 by failing to pay
18 Class Members upon termination or resignation all wages earned?
- 19 h. Are Defendants liable to Class Members for waiting time penalties under
20 Labor Code section 203?
- 21 i. Did Defendants violate Labor Code section 227.3 by not providing Class
22 Members with compensation at their final rate of pay for vested paid vacation
23 time
- 24 j. Did Defendants violate Labor Code section 226, subdivision (a) by not
25 furnishing Class Members with accurate wage statements?
- 26 k. Did Defendants fail to indemnify Class Members for all necessary
27 expenditures or losses incurred in direct consequence of the discharge of their
28 duties or by obedience to the directions of Defendants as required under Labor

Code section 2802?

l. Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?

m. Are Class Members entitled to restitution of wages under Business and Professions Code section 17203?

n. Are Class Members entitled to costs and attorneys' fees?

o. Are Class Members entitled to interest?

C. Typicality

45. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.

D. Adequacy of Representation

46. Plaintiff will fairly and adequately represent and protect the interest of Class Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class actions.

E. Superiority of Class Action

47. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to Class Members predominate over any questions affecting only individual Class Members. Class Members, as further described therein, have been damaged and are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the violation of the Labor Code at times, as set out herein.

48. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay Overtime Wages – Against All Defendants)**

3 49. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 50. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable
7 Wage Orders.

8 51. At all times relevant to this Complaint, Labor Code section 510 was in effect and
9 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in
10 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated
11 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

12 52. At all times relevant to this Complaint, Labor Code section 510 further provided that
13 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
14 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any
15 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
16 pay.”

17 53. Four (4) years prior to the filing of the Complaint in this Action through the present,
18 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more
19 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)
20 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a
21 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours
22 actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

23 54. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater
24 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays
25 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on
26 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and
27 applicable IWC Wage Orders, and California law.

28 ///

55. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

56. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

57. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

58. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

59. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

60. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

61. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods – Against All Defendants)

62. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

1 63. At all relevant times, Plaintiff and Class Members were employees or former
2 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

3 64. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
4 employ an employee for a work period of more than five (5) hours without a timely meal break of
5 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
6 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
7 per day without providing the employee with a second timely meal period of not less than thirty (30)
8 minutes in which the employee is relieved of all of his or her duties.

9 65. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
10 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
11 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
12 of compensation for each workday that the meal period is not provided.

13 66. For four (4) years prior to the filing of the Complaint in this Action through the
14 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
15 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
16 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
17 Class Member's regular rate of compensation on the occasions that Class Members were not
18 provided compliant meal periods.

19 67. By their failure to provide Plaintiff and Class Members compliant meal periods as
20 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
21 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
22 violated the provisions of Labor Code section 512 and applicable Wage Orders.

23 68. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
24 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
25 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

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27 ///

28 ///

69. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

70. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

71. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

72. California law and applicable Wage Orders require that employers "authorize and permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

73. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

74. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member's regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

///

75. By their failure, at times, to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee's regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

76. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for rest periods that they were not authorized or permitted to take.

8 77. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
9 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
10 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
11 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FIFTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Termination – Against All Defendants)

78. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

79. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

80. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

81. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages, minimum wages, and unpaid vacation mentioned

1 above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination
2 in accordance with Labor Code sections 201 or 202.

3 82. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and
4 Class Members all wages earned prior to termination or resignation in accordance with Labor Code
5 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff
6 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,
7 but intentionally adopted policies or practices incompatible with the requirements of Labor Code
8 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination
9 or resignation.

10 83. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to
11 waiting time penalties from the date their earned and unpaid wages were due, upon termination or
12 resignation, until paid, up to a maximum of thirty (30) days.

13 84. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
14 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned
15 prior to termination or resignation.

16 85. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections
17 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
18 waiting time penalties, interest, and their costs of suit, as well.

19 **SIXTH CAUSE OF ACTION**

20 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

21 86. Plaintiff realleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth hereat.

23 87. At all relevant times, Plaintiff and Class Members were employees or former
24 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

25 88. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
26 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
27 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
28 wages earned; all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
2 employer, among other things.

3 89. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
4 before the filing of the Complaint in this Action through the present, Defendants failed to comply
5 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their
6 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that
7 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;
8 all applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate, among other things.

10 90. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
11 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
12 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
13 provided wage statements that Defendants knew were not accurate.

14 91. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
15 suffered injury. The absence of accurate information on Class Members' wage statements at times
16 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
17 mathematical computations to determine the amount of wages owed; causes difficulty and expense
18 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
19 about wages and amounts deducted from wages to state and federal governmental agencies, among
20 other things.

21 92. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
22 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
23 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent
24 pay period, not to exceed an aggregate \$4,000.00 per employee.

25 93. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
26 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
27 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
28 attorneys' fees, and costs of suit.

1 **SEVENTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 2802 – Against All Defendants)**

3 94. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 95. At all relevant times, Plaintiff and Class Members were employees or former
6 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

7 96. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
8 his or her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties . . .”

10 97. For three (3) years prior to the filing of the Complaint in this Action through the
11 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
12 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
13 obedience to the directions of Defendants that included, without limitation: purchasing and/or using
14 cellular phones for work-related purposes.

15 98. During that time period, Plaintiff is informed and believes, and based thereon alleges
16 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class
17 Members for those losses and/or expenditures.

18 99. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have
19 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
20 herein-described losses and/or expenditures.

21 100. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
22 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover
23 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and
24 costs of suit.

25 **EIGHTH CAUSE OF ACTION**

26 **(Unfair Competition – Against All Defendants)**

27 101. Plaintiff realleges and incorporates by reference all of the allegations contained in
28 the preceding paragraphs as though fully set forth hereat.

102. Plaintiff is informed and believes, and based thereon alleges that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

103. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class Members have suffered injury in fact and lost money or property.

104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

105. Plaintiff and Class Members are entitled to costs of suit under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

NINTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 210 – Against All Defendants)

106. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

107. At all relevant times herein, Labor Code section 204, requires and required that:

“[I]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

111

108. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

109. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

TENTH CAUSE OF ACTION

(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)

110. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs and incorporates each by reference as though fully set forth hereat.

111. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer; and other such information as required by Labor Code section 226, subdivision (a).

112. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)

1 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
2 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
3 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

4 113. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
5 this section are in addition to any other penalty provided by law.”

6 114. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
7 and have a policy or practice of failing to furnish non-exempt employees, including, without
8 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
9 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
10 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
11 name of the employer and/or the name and address of the legal entity securing the employer’s services
12 if the employer is a farm labor contractor; and other such information as required by Labor Code
13 section 226, subdivision (a).

14 115. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
15 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
16 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
17 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
18 period for each subsequent violation.

19 **ELEVENTH CAUSE OF ACTION**

20 **(Violation of Labor Code § 558 – Against All Defendants)**

21 116. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
22 and incorporates each by reference as though fully set forth hereat.

23 117. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
24 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
25 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
26 penalty as follows:

27 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
28 pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages;

2 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to
4 an amount sufficient to recover underpaid wages;

5 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

6 118. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
7 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
8 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum
9 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during
10 their employment and after their employment separation; receive accurate, itemized wage
11 statements; be provided with the opportunity to inspect employment records; be provided with
12 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of
13 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate
14 of pay.

15 119. As a direct and proximate result of the herein-described Labor Code violations,
16 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
17 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
18 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
19 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

20 **TWELFTH CAUSE OF ACTION**

21 **(Violation of Labor Code § 1174.5 – Against All Defendants)**

22 120. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
23 and incorporates each by reference as though fully set forth hereat.

24 121. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
25 every person employing labor in California to “[a]llow any member of the commission or the
26 employees of the Division of Labor Standards Enforcement free access to the place of business or
27 employment of the person to secure any information or make any investigation that they are
28 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,

1 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
2 or papers of the person.”

3 122. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
4 every person employing labor in California to “[k]eep a record showing the names and addresses of
5 all employees employed and the ages of all minors.”

6 123. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
7 every person employing labor in California to “[k]eep, at a central location in the state or at the
8 plants or establishments at which employees are employed, payroll records showing the hours
9 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
10 piece rate paid to, employees employed at the respective plants or establishments. These records
11 shall be kept in accordance with rules established for this purpose by the commission, but in any
12 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
13 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
14 earned.”

15 124. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
16 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
17 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
18 member of the commission or employees of the division to inspect records pursuant to subdivision
19 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

20 125. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
21 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain
22 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow
23 inspection of records as required by Labor Code subdivision (b).

24 126. As a direct and proximate result of the herein-described Labor Code violations,
25 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
26 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
27 hundred dollars (\$500) per violation per Aggrieved Employee.

28 / / /

1 **THIRTEENTH CAUSE OF ACTION**

2 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

3 127. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
4 and incorporates each by reference as though fully set forth hereat.

5 128. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
6 person acting either individually or as an officer, agent, or employee of another person, who pays
7 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
8 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
9 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
10 Section 203 as follows:

11 (1) For any initial violation that is intentionally committed, one hundred dollars
12 (\$100) for each underpaid employee for each pay period for which the
13 employee is underpaid. This amount shall be in addition to an amount
14 sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203.

16 (2) For each subsequent violation for the same specific offense, two hundred fifty
17 dollars (\$250) for each underpaid employee for each pay period for which the
18 employee is underpaid regardless of whether the initial violation is
19 intentionally committed. This amount shall be in addition to an amount
20 sufficient to recover underpaid wages, liquidated damages pursuant to Section
21 1194.2, and any applicable penalties imposed pursuant to Section 203.

22 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
23 Section 203, recovered pursuant to this section shall be paid to the affected
24 employee.”

25 129. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
26 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
27 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours
28 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to

1 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
2 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
3 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock.

4 130. As a direct and proximate result of the herein-described Labor Code violations,
5 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
6 recover civil penalties for Defendants' herein-described Labor Code violations in the amount one
7 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
8 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
9 subsequent violation.

10 **FOURTEENTH CAUSE OF ACTION**

11 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

12 131. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
13 and incorporates each by reference as though fully set forth hereat.

14 132. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
15 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
16 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
18 action brought by an aggrieved employee on behalf of himself or herself and other current or former
19 employees pursuant to the procedures specified in Labor Code section 2699.3.

20 133. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
21 Code except those for which a civil penalty is specifically provided, the established civil penalty for
22 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
23 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation.

26 134. Plaintiff is informed and believes and based thereon alleges that Defendants, and
27 each of them, violated the Labor Code sections described herein, including, without limitation, for
28 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or

1 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
2 employment and after employment separation; provide employees the opportunity to inspect
3 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
4 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
5 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
6 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
7 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
8 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

9 135. Moreover, Plaintiff and other Aggrieved Employees within the State of California
10 whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in
11 connection with their herein-described claims for civil penalties.

12 **DEMAND FOR JURY TRIAL**

13 136. Plaintiff demands a trial by jury on all causes of action contained herein.

14 **PRAYER**

15 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment
16 against Defendants as follows:

- 17 A. An order certifying this case as a Class Action;
- 18 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's
19 counsel as class counsel;
- 20 C. Damages for all wages earned and owed, including minimum, overtime wages, and
21 unpaid vested vacation under Labor Code sections 227.3, 510, 558.1, 1194, 1197,
22 and 1199;
- 23 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- 24 E. Damages for unpaid premium wages from missed meal and rest periods under,
25 among other Labor Code sections, 512, 558.1, and 226.7;
- 26 F. Penalties for inaccurate wage statements under Labor Code sections 226,
27 subdivision (e) and 558.1;
- 28 G. Waiting time penalties under Labor Code section 203 and 558.1;

- 1 H. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 558.1,
2 1174.5, 1197.1, and 2699;
3 I. Damages under Labor Code sections 558.1 and 2802;
4 J. Preliminary and permanent injunctions prohibiting Defendants from further
5 violating the California Labor Code and requiring the establishment of appropriate
6 and effective means to prevent future violations;
7 K. Restitution of wages and benefits due which were acquired by means of any unfair
8 business practice, according to proof;
9 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
10 M. For attorneys' fees in prosecuting this action;
11 N. For costs of suit incurred herein; and
12 O. For such other and further relief as the Court deems just and proper.

13
14
15 Dated: June 23, 2021

BIBIYAN LAW GROUP, P.C.

16
17 BY: 

18 DAVID D. BIBIYAN

DIEGO AVILES

19 Attorneys for Plaintiff ROSELINA ESTRADA DE
20 TEQUE on behalf of herself and all others similarly
21 situated and aggrieved
22
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24
25
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

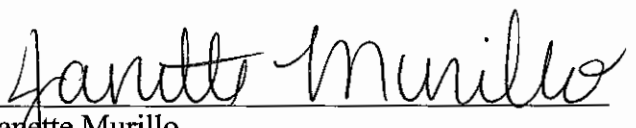
On June 23, 2021, and pursuant to the California Code of Civil Procedure section 1010.6, I caused a true and correct copy of the foregoing document(s) described as **FIRST AMENDED CLASS ACTION COMPLAINT** to be served by electronic transmission via Case Anywhere to the below referenced recipients:

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Counsel for R.J. Acquisition Corp d.b.a Adart Company and Joseph A. DeMarco

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on June 23, 2021 at Beverly Hills, California.


Janette Murillo