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of himself and all others similarly situated

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

ALBERTO MEZA SOLIS, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

PARTNERS PERSONNEL -
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company; HYATT
DIE CAST AND ENGINEERING
CORPORATION - SOUTH, a California
corporation; NEXEM PARTNERS, LLC, a
Delaware limited liability company; NEXEM
STAFFING, INC., a Delaware corporation;
STAFF HOLDINGS, INC., a Delaware
corporation; and DOES 1 through 100,
Inclusive

Defendants.

CASE NO.: 30-2021-01209210-CU-OE-CXC

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

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. FAILURE TO PAY ALL WAGES UPON TERMINATION;
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
7. UNFAIR COMPETITION; and
8. CIVIL PENALTIES LABOR CODE §2699

DEMAND FOR JURY TRIAL

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COMES NOW plaintiff ALBERTO MEZA SOLIS (hereinafter “Mr. Meza” and/or “Plaintiff”) on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by PARTNERS PERSONNEL - MANAGEMENT SERVICES, LLC (“Partners Personnel”), HYATT DIE CAST AND ENGINEERING CORPORATION - SOUTH (“Hyatt Die Cast”), NEXEM PARTNERS, LLC (“Nexem Partners”), NEXEM STAFFING, INC. (“Nexem”), STAFF HOLDINGS, INC. (“Staff”), and any subsidiaries or affiliated companies (hereinafter referred collectively to as “Defendants”), within the State of California.

2. For at least four (4) years prior to the filing of this action and through to the present, Defendants, on multiple occasions, have had a pattern and practice of failing to pay employees wages, including overtime wages, to Plaintiff and other non-exempt employees in the State of California, such that in the aggregate employees are underpaid wages as a result of Defendants’ pattern and practice of unevenly rounding time worked by its employees.

3. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants, on multiple occasions, have had a pattern and practice of failing to provide Plaintiff and other similarly situated employees or former employees within the State of California a thirty (30) minute uninterrupted meal period for days on which the employees worked more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal period for days on which the employees worked in excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal periods as required by California wage and hour laws.

4. For at least for (4) years prior to the filing of this action and continuing to the present, Defendants, on multiple occasions, have had a pattern and practice of failing to provide Plaintiff and similarly situated employees or former employees within the State of California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing to provide compensation for such unprovided rest periods as required by California wage and hour

1 laws.

2 5. For at least for (4) years prior to the filing of this action and continuing
3 through the present, Defendants, on multiple occasions, have failed to pay Plaintiff and other
4 similarly situated employees the full amount of their wages owed to them upon termination and/or
5 resignation as required by Labor Code §§ 201 or 202 and have failed to issue accurate itemized
6 wage statements as required by Labor Code § 226.

7 6. Plaintiff, on behalf of himself and all other similarly situated employees, brings this
8 action pursuant to, including but not limited to, California Labor Code §§ 200, 201, 202, 203, 226,
9 226.7, 510, 512, 1194, 1194.2, 1197, 2699, et seq. and California Code of Regulations, Title 8,
10 §11070, seeking overtime and minimum wages, premium wages for missed meal and rest periods,
11 penalties, civil penalties, and reasonable attorneys' fees and costs.

12 7. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
13 to California Business & Professions Code §§17200-17208 also seeks all monies owed but
14 withheld and retained by Defendants to which Plaintiff and members of the Class are entitled.

15 **PARTIES**

16 **A. Plaintiff**

17 8. Venue as to each defendant is proper in this judicial district, pursuant to California
18 Code of Civil Procedure §395. Defendants operate and do business in California, and each
19 defendant is within the jurisdiction of this court for service of process purposes. The unlawful acts
20 alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
21 California. Defendants employ numerous Class Members in the State of California.

22 9. Plaintiff, Mr. Meza, is a resident of the State of California. At all relevant times
23 herein, he has been employed by Defendants as a non-exempt employee in California, holding the
24 position of quality inspector.

25 **B. Defendants**

26 10. Defendant, Partners Personnel, a Delaware limited liability company, provides
27 temporary staffing services within the State of California. Partners Personnel employed Plaintiff
28 and similarly situated persons within the State of California.

1 11. Defendant, Hyatt Die Cast, a California corporation, manufactures aluminum, zinc,
2 and other alloy die castings, such as for the aerospace industry, within the State of California.
3 Hyatt Die Cast employed Plaintiff and similarly situated persons within the State of California.

4 12. Defendant, Nexem Partners, a Delaware limited liability company, provides
5 temporary staffing services within the State of California. Nexem Partners employed Plaintiff and
6 similarly situated persons within the State of California.

7 13 Defendant, Nexem, a Delaware corporation, provides temporary staffing services
8 within the State of California. Nexem employed Plaintiff and similarly situated persons within the
9 State of California.

10 14. Defendant, Staff Holdings, a Delaware corporation, provides temporary staffing
11 services within the State of California. Staff Holdings employed Plaintiff and similarly situated
12 persons within the State of California.

13 15. Plaintiff is informed and believes that Defendants are joint employers in that they
14 all employed Plaintiff and similarly situated employees at the same time and were operating as a
15 joint enterprise at all relevant time periods.

16 16. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
18 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
19 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants
20 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
21 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
22 capacities of the defendants designated hereinafter as DOES when such identities become known.

23 17. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 mentioned herein, each of the Defendants and DOES whether specifically named and/or
25 designated herein as a DOE were the agents, principals, employees, employers, representatives,
26 joint venturer or co-conspirators, management companies and/or representatives, or alter ego of
27 each of the other Defendants and DOES, either actually or ostensibly, and in doing the things
28 alleged herein acted within the course and scope of such agency, employment, joint venture,

1 conspiracy, reinsurance agreement, co-insurance agreement, management company agreement,
2 alter ego agreement and/or service with the approval, knowledge, authority, acquiescence and/or
3 ratification of each of the remaining Defendants and DOES.

4 **FACTUAL BACKGROUND**

5 18. Plaintiff and other similarly situated employees have not been paid wages,
6 including overtime wages, for all time worked on multiple occasions, such that in the aggregate,
7 employees are underpaid wages as a result of Defendants' pattern and practice of unevenly
8 rounding time worked by its employees.

9 19. Defendants have had a pattern and practice of on multiple occasions failing to
10 provide Plaintiff and other similarly situated employees or former employees within the State of
11 California a thirty (30) minute uninterrupted meal period for days on which the employees worked
12 more than five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods
13 for days on which the employees worked in excess of ten (10) hours in a work day, and on
14 multiple occasions failing to provide compensation for such unprovided meal periods.

15 20. Defendants have had a pattern and practice of on multiple occasions failing to
16 provide Plaintiff and similarly situated employees or former employees within the State of
17 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
18 thereof and on multiple occasions failing to provide compensation for such unprovided rest
19 periods as required by California wage and hour laws.

20 21. Plaintiff and other similarly situated employees or former employees at all times
21 pertinent hereto were not exempt from the overtime and meal and rest break provisions of
22 California law, and the implementing rules and regulations of the IWC California Wage Orders.

23 22. Defendants have failed to comply with Labor Code §226(a) by not providing
24 itemized wage statements accurately showing, including but not limited to, total hours worked
25 during the pay period and pay due and owing for failure on multiple occasions to pay all earned
26 wages as a result of uneven rounding and failure on multiple occasions to provide meal and rest
27 breaks.

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23. At the time Plaintiff's employment and the employment of other former employees of Defendants ended, Defendants willfully failed to pay overtime wages, minimum wages, and one hour of wages in lieu of each unprovided or interrupted meal period and unprovided rest period as described herein.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on behalf of himself, and all others similarly situated, as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent five Classes composed of and defined as follows:

Non-Exempt Employee Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Non-Exempt Employee Class").

Meal Period Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 5 hours or more (collectively referred to as "Meal Period Class").

Rest Period Class

All current and former employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 4 hours or more (collectively referred to as "Rest Period Class").

Wage Statement Class

All current and former employees of Defendants within the State of California, to whom, at any time commencing one (1) year preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as "Wage Statement Class").

Late Pay Class

All former employees of Defendants within the State of California at any time commencing three (3) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who did not receive all their wages upon termination and or resignation of their employment (collectively referred to as "Late Pay Class").

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1 25. Plaintiff reserves the right under California Rules of Court Rule 3.765(b), to amend
2 or modify the class description with greater specificity or further division into subclasses or
3 limitation to particular issues.

4 26. This action has been brought and may properly be maintained as a class action
5 under the provisions of California Code of Civil Procedure §382 because there is a well-defined
6 community of interest in the litigation and the proposed Class is easily ascertainable.

7 **A. Numerosity**

8 27. The potential members of the Class as defined are so numerous that joinder of all
9 the members of the Class is impracticable. While the precise number of Class Members has not
10 been determined at this time, Plaintiff is informed and believes that there are at least one-hundred
11 Class Members employed by Defendants within the State of California.

12 28. Accounting for employee turnover during the relevant periods necessarily increases
13 this number. Plaintiff alleges Defendants' employment records would provide information as to
14 the number and location of all Class Members. Joinder of all members of the proposed Class is not
15 practicable.

16 **B. Commonality**

17 29. There are questions of law and fact common to Class Members. These common
18 questions include, but are not limited to:

- 19 (1) Did Defendants violate Labor Code §1194 by not compensating Class
20 Members overtime wages?
- 21 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
22 Members minimum wages for all hours worked?
- 23 (3) Did Defendants violate Labor Code § 512 by not providing Class Members
24 with meal periods?
- 25 (4) Did Defendants violate Labor Code § 226.7 by not providing Class
26 Members additional wages for missed or interrupted meal periods?
- 27 (5) Did Defendants violate Labor Code §226.7 by not providing Class Members
28 additional wages for missed rest periods?

- 1 (6) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
2 Members upon termination or resignation all wages earned?
- 3 (7) Are Defendants liable to Class Members for penalty wages under Labor
4 Code § 203?
- 5 (8) Did Defendants violate Labor Code § 226(a) by not furnishing Class
6 Members with accurate wage statements?
- 7 (9) Did Defendants violate the Unfair Competition Law, Business and
8 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
9 herein?
- 10 (10) Are Class Members entitled to restitution of penalty wages under Business
11 and Professions Code § 17203?
- 12 (11) Are Class Members entitled to attorneys' fees?
- 13 (12) Are Class Members entitled to interest?

14 **C. Typicality**

15 30. The claims of Plaintiff herein alleged are typical of those claims which could be
16 alleged by any member of the classes, and the relief sought is typical of the relief which would be
17 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
18 Classes sustained injuries and damages arising out of and caused by Defendants' common course of
19 conduct in violation of laws and regulations that have the force and effect of law and statutes as
20 alleged herein.

21 **D. Adequacy of Representation**

22 31. Plaintiff will fairly and adequately represent and protect the interests of the
23 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
24 litigating wage and hour class actions.

25 **E. Superiority of Class Action**

26 32. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the Class has been damaged and is entitled to
2 recovery by reason of Defendants' illegal pattern and practice of failing to pay overtime wages,
3 failing to pay minimum wages, failing to provide meal and rest breaks or compensation in lieu
4 thereof, failing to provide accurate itemized wage statements, and failing to pay all wages due upon
5 termination and/or resignation, as described herein.

6 33. Class action treatment will allow those similarly situated persons to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.
8 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
9 action that would preclude its maintenance as a class action.

10 FIRST CAUSE OF ACTION

11 FAILURE TO PAY OVERTIME WAGES

12 (By Plaintiff and the Class Against All Defendants)

13 34. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 35. At all times relevant to this complaint, California Labor Code §510 was in effect
16 and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours
17 in one workday and any work in excess of forty hours in any one workweek . . . shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay for an
19 employee."

20 36. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
21 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
22 forty hours in a work week and on multiple occasions these employees have not been paid overtime
23 wages, such that in the aggregate employees are underpaid overtime wages as a result of
24 Defendants' pattern and practice of unevenly rounding time worked by its employees.

25 37. Accordingly, by requiring Plaintiff and the Non-Exempt Employee Class to work
26 in excess of eight hours per day and/or forty hours per week and without properly compensating
27 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
28 §1194.

38. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code §3287.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the Class Against All Defendants)

9 39. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs of this Complaint as though fully set forth herein.

40. At all relevant times, Plaintiff and the members of the Non-Exempt Employee Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

13 41. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
14 members of the Non-Exempt Employee Class were entitled to receive minimum wages for all
15 hours worked.

16 42. At all times herein mentioned, to the extent that Plaintiff and the Non-Exempt
17 Employee Class worked for Defendants during shifts that were less than eight hours in a work day
18 and/or less than forty hours in a work week, on multiple occasions these employees have not been
19 paid minimum wage, such that in the aggregate, employees are underpaid wages as a result of
20 Defendants' pattern and practice of unevenly rounding time worked by its employees.
21 Defendants failure to pay Plaintiff and members of the Non-Exempt Employee Class minimum
22 wages for all hours worked, as described herein, is in violation of Labor Code §1197 and applicable
23 Wage Orders. As a result of Defendants pattern and practice, Plaintiff and members of the Non-
24 Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they
25 were not paid minimum wages for all hours worked.

43. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the Non-Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages, reasonable attorneys' fees, and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

4 44. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs of this Complaint as though fully set forth herein.

6 45. Pursuant to Labor Code §512, no employer shall employ an employee for a work
7 period of more than five (5) hours without a meal break of not less than thirty (30) minutes in
8 which the employee is relieved of all of his or her duties. Furthermore no employer shall employ
9 an employee for a work period of more than ten (10) hours per day without providing the employee
10 with a second meal period of not less than thirty (30) minutes in which the employee is relieved of
11 all of his or her duties. Plaintiff and other members of the Meal Period Class, on multiple
12 occasions, were not provided with requisite meal periods as contemplated under the law since
13 employees would be prevented and discouraged by workplace interruptions which caused missed,
14 short and late meal periods.

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

19 47. By their failure to provide Plaintiff and members of the Meal Period Class with the
20 meal periods contemplated by California law, and failing to provide compensation for such
21 unprovided meal periods, as alleged above, Defendants willfully violated the provisions of Labor
22 Code §512 and applicable Wage Orders.

23 48. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
24 Meal Period Class have suffered damages in an amount, subject to proof, to the extent they were
25 not paid additional pay owed for missed meal periods.

26 49. Plaintiff and the other members of the Meal Period Class are entitled to recover the
27 full amount of their unpaid additional pay for missed meal periods. Pursuant to Code of Civil
28 Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to recover

1 reasonable attorneys' fees and costs of suit.

2 50. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
3 Class are entitled to recover prejudgment interest on the additional pay owed for missed meal
4 periods.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 **(By Plaintiff and the Class Against All Defendants)**

8 51. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs of this Complaint as though fully set forth herein.

10 52. California law and applicable Wage Orders require that employers "authorize and
11 permit" employees to take paid 10 minute rest periods in about the middle of each 4-hour work
12 period "or major fraction thereof." Accordingly, employees who work shifts of 3 ½ to 6 hours
13 must be provided 10 minutes of paid rest period, employees who work shifts of more than 6 and up
14 to 10 hours must be provided with 20 minutes of paid rest period, and employees who work shifts
15 of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and other
16 members of the Rest Period Class on multiple occasions were not provided with requisite rest
17 periods as contemplated under the law.

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

22 54. By their failure to provide Plaintiff and other members of the Rest Period Class
23 with the rest periods contemplated by California law, and failing to provide compensation for such
24 unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor
25 Code §226.7 and applicable Wage Orders.

26 55. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
27 Rest Period Class have suffered damages in an amount, subject to proof, to the extent they were not
28 paid additional pay owed for missed rest periods.

56. Plaintiff and the other members of the Rest Period Class are entitled to recover the full amount of their unpaid additional pay for missed rest periods. Pursuant to Code of Civil Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to recover reasonable attorneys' fees and costs of suit.

57. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Rest Period Class are entitled to recover prejudgment interest on the additional pay owed for missed rest periods.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(By Plaintiff and the Class Against All Defendants)

58. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

59. At all relevant times, Plaintiff and other members of the Late Pay Class were employees of Defendants covered by Labor Code §§ 201 and 202.

60. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay Class were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged employers were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Employees 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.

61. Defendants failed to pay Plaintiff and other members of the Late Pay Class all wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202. Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that within the applicable limitations period, Defendants had a pattern and practice of not paying upon termination, the wages owed to them as a consequence of overtime wage and minimum wage violations, as well as not paying premium wages for missed meal and rest periods, as described herein.

62. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful. Defendants had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the time of termination in accordance with Labor Code §§ 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

6 63. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late
7 Pay Class are entitled to all wages earned prior to termination that Defendants failed to pay them.

8 64. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class
9 are entitled to penalty wages from the date their earned and unpaid wages were due, upon
10 termination, until paid, up to a maximum of 30 days.

11 65. As a result of Defendants' unlawful conduct, Plaintiff and other members of the
12 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
13 paid for all wages earned prior to termination.

66. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not paid all penalty wages owed under Labor Code § 203.

67. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the Late Pay Class are entitled to recover the full amount of their unpaid wages, penalty wages under Labor Code § 203, reasonable attorneys' fees, and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code § 3287(a), Plaintiff and the other members of the Late Pay Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff and the Class Against All Defendants)

68. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

69. At all relevant times, Plaintiff and the other members of the Wage Statement Class were employees of Defendants covered by Labor Code § 226.

1 70. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
2 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
3 accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each hourly
5 rate by the employee.

6 71. Defendants failed to provide Plaintiff and the other members of the Wage
7 Statement Class accurate itemized wage statements in accordance with Labor Code § 226(a).

8 72. Plaintiff and the other members of the Wage Statement Class are informed and
9 believe and thereon allege that at all relevant times, Defendants maintained and continue to
10 maintain a policy and practice of issuing wage statements that do not show, including but not
11 limited to, payment and hours worked that were not paid, as well as premiums for missed meal and
12 rest periods, as described herein. Defendants' practices resulted and continue to result in, the
13 issuance of Wage Statements to Plaintiff and other members of the Class that do not comply with
14 the itemization requirements.

15 73. Defendants' failure to provide Plaintiff and other members of the Wage Statement
16 Class with accurate Wage Statements was knowing and intentional. Defendants had the ability to
17 provide Plaintiff and the other members of the Wage Statement Class with accurate Wage
18 Statements, but intentionally provided wage statements that Defendants knew were not accurate.

19 74. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
20 Wage Statement Class have suffered injury. The absence of accurate information on their wage
21 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
22 and mathematical computations to determine the amount of wages owed, causes difficulty and
23 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
24 information about wages and amounts deducted from wages to state and federal government
25 agencies.

26 75. Pursuant to Labor Code § 226(e) Plaintiff and other members of the Wage
27 Statement Class are entitled to recover fifty dollars (\$50) for the initial pay period during the period
28 in which violation of Labor Code § 226 occurred and one hundred dollars (\$100) for each violation

1 of Labor Code § 226 in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 per
2 employee.

3 76. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
4 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
5 Code § 226(e) reasonable attorneys' fees and costs of suit.

6 **SEVENTH CAUSE OF ACTION**

7 **UNFAIR COMPETITION**

8 **(By Plaintiff and Class Members Against All Defendants)**

9 77. Plaintiff realleges and incorporates by reference all of the allegations contained in
10 the preceding paragraphs of this Complaint as though fully set forth herein.

11 78. The unlawful conduct of Defendants alleged herein constitutes unfair competition
12 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
13 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
14 other comparable companies doing business in the state of California that comply with their
15 obligations to compensate employees in accordance with the Labor Code.

16 79. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
17 similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff
18 and similarly situated Class Members have been deprived from not being compensated overtime
19 wages, from not being compensated minimum wages, and from not being provided with meal and
20 rest breaks or compensation in lieu thereof, as described herein.

21 80. Pursuant to Business & Professions Code § 17203 Plaintiff and similarly situated
22 Class Members are entitled to restitution of all wages and other monies owed to them under the
23 Labor Code, including interest thereon, in which they had a property interest which Defendants
24 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
25 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
26 unjustly enriched by their failure to comply with the Labor Code.

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81. Plaintiff and similarly situated Class Members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES LABOR CODE §2699

(By Plaintiff and Aggrieved Employees Against All Defendants)

82. Plaintiff realleges and incorporate by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

83. During the period beginning one year period preceding the filing of Plaintiff's written notice to the Labor and Workforce Development Agency ("LWDA"), (the "Civil Penalty Period"), Defendants violated, including but not limited, to Labor Code §§ 200, 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2 and 1197.

13 84. Labor Code §2699(a) and (g) authorize an aggrieved employee, on behalf of
14 themselves and other current and former employees, to bring a civil action to recover civil penalties
15 pursuant to the procedures specified in Labor Code §2699.3.

16 85. Plaintiff has complied with the procedures for bringing suit specified in Labor
17 Code §2699.3. On or about July 2, 2021, Plaintiff gave written notice to the LWDA and to
18 Defendants of the specified provisions of the Labor Code alleged to have been violated and the
19 LWDA elected not to investigate.

20 86. Pursuant to Labor Code §2699(a) and (f), Plaintiff and the aggrieved employees are
21 entitled to recover civil penalties for Defendants' violations of the specified Labor Code sections
22 during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee per
23 pay period for the initial violation and two hundred dollars (\$200) for each employee per pay period
24 for each subsequent violation.

25 87. Pursuant to Labor Code §2699(g), Plaintiff and the aggrieved employees are
26 entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil
27 penalties.

28 *///*

PRAYER

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for judgment against Defendants as follows:

A. An order certifying that Plaintiff may pursue his claims against Defendants as a class action on behalf of the Class Members;

B. An order appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;

C. Penalties for inaccurate wage statements under Labor Code §226(e);

D. Damages for unpaid wages under Labor Code §§201 or 202;

E. Damages for unpaid penalty wages under Labor Code §203;

F. Damages for unpaid wages for missed meal periods under Labor Code §226.7;

G. Damages for unpaid wages for missed rest periods under Labor Code §226.7;

H. Damages for minimum wages;

I. Damages for premium wages;

J. Liquidated damages for unpaid minimum wages;

K. Damages for unpaid overtime wages under Labor Code §1194;

L. Restitution under Business and Professions Code §17203;

M. Civil Penalties under Labor Code §2699(a)-(f);

N. Pre-judgment interest;

O. Costs;

P. Reasonable attorneys' fees; and

Q. Such other and further relief as the Court deems just and proper.

DATED: February 28, 2022

THE NOURMAND LAW FIRM, APC

By:



Michael Nourmand, Esq.
James A. De Sario, Esq.
Attorneys for Plaintiff

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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 18 and not a party to the within entitled action; my business address is 8822 West Olympic Boulevard, Beverly Hills, California 90211.

On March 1, 2022, I served the following document(s) described as:

**FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND
RESTITUTION**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

Kathy A. Le, Esq.
Megan L. LaPointe, Esq.
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618

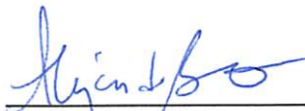
Courtesy Copy By Email: Kathy.le@jacksonlewis.com; megan.lapointe@jacksonlewis.com

Kasey Diba, Esq.
Amir Alavi, Esq.
FINNEGAN & DIBA
3660 Wilshire Boulevard, Suite 800
Los Angeles, California 90010

Courtesy Copy By Email: kdiba@fdlegal.com; aalavi@fdlegal.com

BY MAIL: As follows: I am readily familiar with our office's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on March 1, 2022, at Beverly Hills, California.


Alejandra Beltran