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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

OWEN SORTINO, as an individual, on behalf of
himself, and all persons similarly situated,

Plaintiff,

v.

TRYAD SERVICE CORPORATION, a
California corporation; J.D. RUSH
COMPANY, INC., a California corporation;
DEBORAH PATRICK, an Individual; and
DOES 1 to 10 inclusive,

Defendants.

CASE NO.: BCV-22-100570

CLASS & REPRESENTATIVE ACTION

**COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, RESTITUTION AND
INJUNCTIVE RELIEF:**

- (1) FAILURE TO TIMELY PAY MINIMUM
WAGES AND OVERTIME
COMPENSATION (Labor Code §§ 204,
210, 510, 1194, 1197, 1197.1, 1198, and
1199);**
- (2) FAILURE TO PROVIDE LEGALLY
COMPLIANT MEAL PERIODS OR
COMPENSATION IN LIEU THEREOF
(Labor Code §§ 204, 226.7 and 512);**
- (3) FAILURE TO PROVIDE LEGALLY
COMPLIANT REST PERIODS OR
COMPENSATION IN LIEU THEREOF
(Labor Code §§ 204 and 226.7);**
- (4) FAILURE TO PAY ALL WAGES
OWED UPON SEPARATION
(Labor Code §§ 201, 202, and 203);**
- (5) FAILURE TO PROVIDE PAID SICK
LEAVE AND WRITTEN NOTICE OF
THE AMOUNT OF SICK LEAVE
AVAILABLE (Labor Code § 246);**

- 1 (6) **FAILURE TO FURNISH ACCURATE**
2 **ITEMIZED WAGE STATEMENTS**
3 **(Labor Code §§ 226 and 226.3);**
- 4 (7) **FAILURE TO MAINTAIN ACCURATE**
5 **RECORDS (Labor Code §§ 226(a) and**
6 **1174);**
- 7 (8) **FAILURE TO REIMBURSE FOR**
8 **NECESSARY WORK EXPENSES**
9 **(Labor Code §§ 2800 and 2802);**
- 10 (9) **VIOLATION OF THE UNFAIR**
11 **COMPETITION LAW**
12 **(Bus. & Prof. Code §§ 17200 *et seq.*);**
- 13 (10) **PRIVATE ATTORNEYS GENERAL**
14 **ACT OF 2004**
15 **(Labor Code §§ 2698 *et seq.*);**

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff Owen Sortino (“Plaintiff”) brings this civil action on behalf of himself and all persons
18 similarly situated, against Tryad Service Corporation, J.D. Rush Company, Inc., Deborah Patrick and
19 Does 1 through 10 (collectively “Defendants”), on the following grounds:

20 **INTRODUCTION**

21 1. Plaintiff brings this civil action on behalf of himself and all other current or former non-
22 exempt employees who were employed by Defendants in the state of California during the relevant
23 time period (collectively referred to herein as “Tryad employees”).

24 2. Plaintiff, on behalf of himself and other Tryad employees, seeks damages, civil
25 penalties, injunctive relief and restitution, as well as reasonable attorneys’ fees and litigation costs, as
26 provided under California law.

27 3. All allegations in this Complaint are based upon information and belief, except those
28 allegations specifically pertaining to Plaintiff and his counsel, which are based on personal knowledge.

1 Each allegation in this Complaint has either evidentiary support or is likely to have evidentiary support
2 after a reasonable opportunity to conduct further investigation and discovery.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over this action pursuant to California Code of Civil
5 Procedure § 410.10. Pursuant to Code of Civil Procedure § 382 and California Business and
6 Professions Code § 17203, Plaintiff brings this action on behalf of himself, and on behalf of all persons
7 similarly situated, as defined herein.

8 5. This Court has personal jurisdiction over Defendants because each defendant conducts
9 business in the state of California and has caused injuries in and around Kern County, as well as
10 throughout the state of California, by and through their acts, omissions and violations of the California
11 Labor Code and Business and Professions Code, as alleged herein.

12 6. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
13 Procedure § 395(a). Each individual defendant transacts business in Kern County and is otherwise
14 within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein
15 have a direct effect on Plaintiff and those similarly situated within Kern County and throughout the
16 state of California.

17 7. Pursuant to Rule 3.400 of the California Rules of Court, this case shall be deemed a
18 complex action because it is filed as a class action and involves specialized case management,
19 extensive discovery and evidence, difficult or novel issues of law and fact and is likely to require
20 extensive post judgment supervision.

21 **THE PARTIES**

22 **I. PLAINTIFF**

23 8. Plaintiff Owen Sortino at all material times mentioned herein:

24 a. Was and is a resident of the County of Kern;

25 b. Was employed by Defendants as a Gravel Pack Tool Hand and assigned to work
26 at multiple worksites in California from approximately April 2021 to October
27 2021;

- c. Was compensated on an hourly basis;
- d. Was not compensated for all hours worked;
- e. Regularly worked more than eight hours per day;
- f. Was subject to Defendants' policy and practice of editing and rounding his timekeeping records so that he did not receive compensation he was entitled to;
- g. Was not compensated the appropriate overtime and/or double time rate for hours worked beyond eight hours per day and 40 hours per week;
- h. Was not timely paid minimum wage and overtime compensation;
- i. Was not provided with legally compliant meal periods or compensation in lieu thereof;
- j. Was not provided with legally compliant rest periods or compensation in lieu thereof;
- k. Was not provided an opportunity to document or report non-compliant meal and rest periods;
- l. Was required to remain readily available to perform work for Defendants during meal and rest periods;
- m. Was not provided with adequate paid sick leave or written notice of the amount of paid sick leave available, as required by California law;
- n. Was not provided with accurate and itemized wage statements;
- o. Believes his employee records were not accurately maintained by Defendants;
- p. Was not reimbursed for necessary work expenses;
- q. Was subject to Defendants' unlawful, unfair and fraudulent business practices;
- r. Is a member of the Class and Subclasses described below;
- s. Is an "aggrieved employee" as defined by Labor Code § 2699(c); and
- t. Complied with the requirements outlined in Labor Code §§ 2698 *et seq.*

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1 **II. DEFENDANTS**

2 9. Defendant Tryad Service Corporation is a California corporation that does business in
3 California. Specifically, it is in the business of providing services in the threading industry. Moreover,
4 Tryad is a “world-class” supplier of down-hole requirements for the oil and gas industry. Tryad’s wide
5 range of services also include mill slotting, round hole perforating, wire wrap screen lining, gravel
6 packing, and the use of down-hole tools. *See <https://jdrush.com/associated-companies/tryad/>.*

7 10. J.D. Rush Company, Inc. is a parent company of multiple subsidiaries, including Tryad
8 Service Corporation. JD Rush Company, Inc. is in the business of providing services in the oil and gas
9 industry. *See <https://jdrush.com>.*

10 11. Defendant Deborah Patrick is believed to be a resident of California. During Mr.
11 Sortino’s employment he reported to Deborah Patrick who was his supervisor and/or Human Resources
12 Manager. Deborah Patrick is alleged to have acted individually and as an officer, agent, or employee of
13 Tryad, and is therefore personally liable for many of the Labor Code violations described herein. *See*
14 *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 811-13.

15 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
16 associate, or otherwise of Does 1 through 10, are unknown to Plaintiff, who therefore sues these
17 defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend
18 his complaint to allege the true names and capacities of Does 1 through 10 when they are ascertained.

19 13. At all times relevant to this complaint, acts alleged to have been done by Defendants are
20 also alleged to have been done by the unascertained defendants mentioned above, and by each of their
21 agents and employees who acted within the scope of their agency and/or employment.

22 14. At all times mentioned herein, each defendant acted as an agent, servant, employee, co-
23 conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things alleged
24 herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance
25 of the joint venture.

26 15. At all times mentioned herein, the acts and omissions of each of the defendants
27 concurrently contributed to the various acts and omissions of each and every one of the other
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1 Defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each of
2 the Defendants approved of, condoned, or otherwise ratified each and every one of the acts or
3 omissions complained of herein. Each defendant and Doe defendant were and are acting with the
4 authority of each and every other defendant and are acting as agents of each and every other defendant
5 or Doe defendant.

6 **FACTUAL ALLEGATIONS**

7 16. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
8 paragraphs of this Complaint.

9 17. Plaintiff alleges, based on information and belief, that all Tryad employees employed by
10 Defendants in California are subject to the same and/or similar policies, practices, procedures,
11 guidelines, and/or culture set forth herein.

12 18. Plaintiff also alleges that he and other current or former Tryad employees in California
13 have suffered, and will continue to suffer, the same and/or similar violations of law described herein.

14 19. Plaintiff was employed by Defendants in an hourly, non-exempt capacity from
15 approximately April 2021 to October 2021. Throughout his employment, Plaintiff was assigned to
16 work as a Gravel Pack Tool Hand at various worksites in California.

17 20. Plaintiff is informed and believes, and alleges thereon, that Defendants employ a number
18 of individuals in an hourly, non-exempt capacity who work at various worksites in the state of
19 California.

20 21. During the relevant time period, Defendants routinely required Tryad employees to work
21 more than eight hours per day.

22 22. Plaintiff alleges that as a matter of policy and practice, Defendants do not properly
23 compensate Tryad employees for all hours worked. For example, Tryad requires its employees to
24 clock-in and out of their job using the ADP platform. Plaintiff further alleges that Tryad has a policy,
25 practice, guideline, procedure and/or culture of editing its employees' clock-in and clock-out records so
26 that they do not receive the minimum, overtime and double-time compensation they are entitled to.

1 23. Plaintiff asserts that Defendants do not provide Tryad employees with an opportunity to
2 take a 30-minute off-duty meal period when they work five or more hours in a workday because
3 Defendants require their employees to be readily available to perform work during meal periods. As a
4 matter of policy and practice, Defendants do not schedule any meal periods for its employees.

5 24. Plaintiff contends that on the rare occasions when he and other Tryad employees are
6 provided with a meal period, the meal periods are often late, short or interrupted due to Defendants'
7 requirement that Tryad employees engage in their job duties throughout the duration of their shift.

8 25. Plaintiff alleges that Defendants' policies and practices do not authorize and permit
9 Tryad employees to take off-duty rest periods for every four hours worked or a major fraction thereof.
10 In order to complete their assigned duties, Plaintiff and other Tryad employees were often compelled
11 and/or encouraged to take short or interrupted rest periods, or to forgo their rest periods altogether.

12 26. Plaintiff alleges that although Defendants were aware that Tryad employees were not
13 receiving meal and rest periods that comport with California law, they do not pay the premium required
14 under Labor Code § 226.7, nor do they have a procedure or mechanism for Tryad employees to report
15 or document non-compliant meal and rest breaks.

16 27. Plaintiff contends that as a result of Defendants' failure to account for all hours worked,
17 he and other Tryad employees did not accrue paid sick leave at the rate of one hour of paid sick leave
18 for every 30 hours worked, as required under California law. In addition, Plaintiff and other Tryad
19 employees were unable to determine how much paid sick leave they had available to them because
20 Defendants failed to provide written notice of such, as required under Labor Code § 246(i).

21 28. Plaintiff contends that over the course of the relevant time period, Defendants have
22 consistently provided him and other nonexempt employees with wage statements that do not comply
23 with California law. Specifically, by rounding and editing employees' timekeeping records, Defendants
24 violate Labor Code § 226(a) because the gross and net wages earned, total hours worked, and the
25 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
26 at each hourly rate do not accurately reflect all of the hours employees actually work, including
27 overtime hours.

29. On information and belief, Plaintiff alleges that as a result of Defendants' failure to pay premium wages for missed or non-compliant meal and rest periods, as well as overtime and minimum wages for all work performed, Defendants also willfully failed to pay nonexempt employees all wages owed upon termination as required under Labor Code §§ 201 and 202. As such, Tryad employees who were terminated or resigned during the relevant time period are entitled to waiting time penalties under Labor Code § 203.

30. As a result of the policies and practices described herein, including but not limited to Defendants' failure to accurately record and compensate Tryad employees for all hours worked, Plaintiff alleges that Defendants knowingly and intentionally failed to maintain accurate employment records, as required under California law.

31. Plaintiff also asserts that Defendants failed to reimburse Tryad employees for necessary work expenses in violation of Labor Code §§ 2800 and 2802.

32. On December 23, 2021, Plaintiff submitted notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants informing them of Defendants’ alleged Labor Code violations pursuant to the Private Attorneys General Act of 2004 (“PAGA”). A true and correct copy of the notice is attached hereto as **Exhibit 1** and is incorporated herein by this reference.

33. 54. To date the LWDA has not provided notice of whether it intends to investigate the alleged violations. Therefore, Plaintiff has the right to pursue his claims under PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

34. Plaintiff believes that additional violations may be discovered, and therefore reserves his right to allege any additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations throughout the discovery process, Plaintiff will seek to amend his Complaint.

CLASS DEFINITIONS

35. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated, and therefore seeks class certification under Code of Civil Procedure § 382.

36. Plaintiff's proposed Class is defined as all current or former non-exempt employees who

1 were employed by Defendants in the state of California at any time during the period commencing on
2 the date that is within four years prior to the filing of this Complaint through the present date
3 (hereinafter the “Class Period”) who suffered one or more of the violations alleged herein. To the extent
4 that equitable tolling operates to toll the claims by the classes against Defendants, the Class Period
5 should be adjusted accordingly.

6 37. Plaintiff will also seek to certify the following Subclasses:

- 7 a. Meal Period Subclass: All current or former non-exempt Tryad employees
8 employed by Defendants in the state of California who were not provided with
9 the opportunity to take legally compliant meal periods or compensation in lieu
10 thereof in violation of California law during the Class Period.
- 11 b. Rest Period Subclass: All current or former non-exempt Tryad employees
12 employed by Defendants in the state of California who were not authorized and
13 permitted to take legally compliant rest periods or compensation in lieu thereof
14 in violation of California law during the Class Period.
- 15 c. Unpaid Wages Subclass: All current or former non-exempt Tryad employees
16 employed by Defendants in the state of California who were not properly paid
17 for all hours worked in violation of California law during the Class Period.
- 18 d. Waiting Time Penalties Subclass: All former non-exempt Tryad employees
19 employed by Defendants in the state of California who were not paid all wages
20 due upon separation or termination of the employment relationship in violation
21 of California law during the Class Period.
- 22 e. Paid Sick Leave Subclass: All current or former non-exempt Tryad employees
23 employed by Defendants in the state of California who were not provided with
24 paid sick leave in violation of California law during the Class Period.
- 25 f. Wage Statement Subclass: All current or former non-exempt Tryad employees
26 employed by Defendants in the state of California who were not provided with
27 accurate and itemized wage statements in violation of California law during the
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Class Period.

- g. Employment Records Subclass: All current or former non-exempt Tryad employees employed by Defendants in the state of California whose information was not accurately recorded or maintained in violation of California law during the Class Period.
- h. Reimbursement Subclass: All current or former non-exempt Tryad employees employed by Defendants in the state of California who were not reimbursed for necessary work expenses in violation of California law during the Class Period.
- i. Unfair Competition Subclass: All current or former non-exempt Tryad employees employed by Defendants in the state of California who were subject to Defendants' unlawful, unfair, and fraudulent business practices in violation of California law during the Class Period.

38. Members of the Class and Subclasses are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours and working conditions in the state of California.

39. More precise definitions of the Class and Subclass may be determined after further investigation and discovery. Plaintiff reserves his right to redefine them at any time prior to the Court's order on Plaintiff's Motion for Class Certification as provided by law. (Cal. Rules of Court, rule 3.765(b).)

CLASS ALLEGATIONS

40. Plaintiff brings this action on behalf of himself, and on behalf of all persons within the defined Class and Subclasses included herein.

41. This class action meets the statutory prerequisites for the maintenance of a class action, as set forth in Code of Civil Procedure § 382 and Civil Code § 1781:

- a. The persons who comprise the Class and Subclasses are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

- b. Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the Class and Subclasses and will apply uniformly to every member of the Class and/or Subclasses, and as a practical matter, will be dispositive of the interests of the other members not party to the adjudication;
- c. The parties opposing the Class and Subclasses have acted or have refused to act on grounds generally applicable to the Class and Subclasses, thereby making final injunctive relief or declaratory relief appropriate with respect to the Class and Subclasses as a whole; and
- d. Common questions of law and fact exist as to the members of the Class and Subclasses and predominate over any question affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:
 - i. The interests of class members in individually controlling the prosecution or defense of separate actions;
 - ii. The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class and Subclasses;
 - iii. The desirability or undesirability of concentrating the litigation of the claims in this particular forum; and
 - iv. The likely difficulties in the managing of a class action.

42. The Court should permit this action to be maintained as a class action pursuant to Code of Civil Procedure § 382 and Civil Code § 1781 because:

- a. Questions of law and fact common to the Class and Subclasses are substantially similar and predominate over any questions affecting only individual members;
- b. A class action is superior to any other available method for the fair and efficient adjudication of class members' claims;
- c. The members of the Class and Subclasses are so numerous that it is impractical

1 to bring all class members before the Court;

2 d. Plaintiff's claims are typical of the claims of the Class and Subclasses;

3 e. Class members will not be able to obtain effective and economic legal redress
4 unless the action is maintained as a class action;

5 f. There is a community of interest in obtaining appropriate legal and equitable
6 relief for the common law and statutory violations and other improprieties
7 alleged, and in obtaining adequate compensation for the damages that
8 Defendants' actions have inflicted upon the Class and Subclasses;

9 g. Plaintiff can fairly and adequately protect the interests of the Class and
10 Subclasses;

11 h. There is a community of interest in ensuring that the combined assets and
12 available insurance of Defendants is sufficient to adequately compensate the
13 class members for the injuries sustained; and

14 i. Defendants have acted or refused to act on grounds generally applicable to the
15 Class and Subclasses, thereby making final injunctive relief appropriate with
16 respect to the Class and Subclasses as a whole.

17 **PAGA COLLECTIVE**

18 43. The proposed PAGA Collective consists of all current and former non-exempt
19 employees of Defendants in the state of California (collectively referred to herein as "Tryad
20 employees") during the period commencing on the date that is within one year and sixty-five days prior
21 to the filing of the Complaint and through the present date (the "PAGA Period"). To the extent that
22 equitable tolling operates to toll the claims by the PAGA Collective against Defendants, the PAGA
23 Period should be adjusted accordingly.

24 44. Plaintiff asserts that all members of the PAGA Collective are "employees" as the term is
25 used and defined in the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage
26 Orders regulating wages and working conditions in the state of California.

27 45. A more precise definition of the PAGA Collective may be determined after further
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1 investigation and discovery. Plaintiff reserves his right to redefine the PAGA Collective in accordance
2 with California law.

3 **FIRST CAUSE OF ACTION**

4 **(By Plaintiff Individually and on Behalf of the Class Against Defendants)**

5 **FAILURE TO TIMELY PAY MINIMUM AND OVERTIME WAGES**

6 46. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
7 paragraphs of this Complaint.

8 47. Labor Code § 204 establishes an employee's fundamental right in the state of California
9 to be paid wages in a timely manner for their work.

10 48. Labor Code § 1197 requires employers to pay their employees the minimum wage as
11 fixed by the commission and further states that payment of wages lower than the fixed minimum for all
12 time worked is unlawful.

13 49. Labor Code § 1197.1 makes it unlawful for any employer or any other person acting
14 either individually or as an officer, agent, or employee of another person, to pay an employee, or cause
15 an employee to be paid less than the applicable minimum wage.

16 50. Similarly, under Labor Code § 558.1, "Any employer or other person acting on behalf of
17 an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours
18 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be
19 violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
20 violation." Subsection (b) further provides that "the term 'other person acting on behalf of an employer'
21 is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and
22 the term 'managing agent' has the same meaning as in subdivision (b) of § 3294 of the Civil Code."

23 51. Under Labor Code § 510 it is unlawful for an employer to employ persons for more than
24 eight hours per day or 40 hours per week without compensating them at the rate of one and one-half or
25 two times the employee's regular pay rate, depending on the number of hours worked. (*See also* IWC
26 Wage Order No. 16-2001, Subdiv. 3(A).)

1 52. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
2 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on
3 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of
4 pay of an employee. Labor Code § 510.

5 53. An employee may not waive his or her right to overtime compensation and any
6 agreement by the employee to accept less than the statutorily required rate is unenforceable as a matter
7 of law. (*Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1430.)

8 54. § 1194(a) of the Labor Code states:

9 Notwithstanding any agreement to work for a lesser wage, any
10 employee receiving less than the legal minimum wage or the legal
11 overtime compensation applicable to the employee is entitled to
12 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorney's fees, and costs of suit.

13 55. Plaintiff contends that Defendants failed to pay him and other Tryad employees the
14 required minimum wages and overtime wages for all time worked.

15 56. During the relevant time period, Defendants had, and continue to have, a policy and
16 practice of requiring Tryad employees to work at least six hours per day.

17 57. Defendants require Tryad employees to clock-in and out of their job using the ADP
18 platform.

19 58. Plaintiff contends that Defendants have a policy and practice of editing its employees'
20 clock-in and clock-out records so that they do not receive the minimum, overtime and double-time
21 compensation they are entitled to. Thus, Defendants compel, encourage and/or otherwise direct
22 supervisory positions to modify Tryad employees' time records after the fact (i.e. shave time). As a
23 result, Tryad employees, including Plaintiff, regularly engage in work-related activities during the time
24 that Defendants automatically deduct from their time worked. Since Defendants do not compensate
25 their employees for such time, Defendants do not compensate their employees for all time worked as
26 required by California law.

59. Plaintiff contends that he and other Tryad employees were regularly required to work more than eight hours per day and/or 40 hours per week. Consequently, Plaintiff and other Tryad employees are entitled to receive overtime compensation at the rate of one and one-half times their respective regular pay rates for all hours worked beyond eight hours a day and/or 40 hours per week. However, Plaintiff alleges that Defendants did not adequately compensate Tryad employees for overtime.

60. In addition, Plaintiff and other Tryad employees who worked more than 12 hours in one day were often not compensated at the rate of no less than twice the regular rate of pay for an employee.

61. Plaintiff alleges that Defendants furnished paychecks to him and other Tryad employees that did not include compensation for all hours worked. Plaintiff further contends that Defendants did not remedy such by promptly paying all unpaid wages owed to him and other Tryad employees, even after being notified of such. Accordingly, Defendants failed to timely pay Tryad employees for their work in violation of California law.

62. By virtue of Defendants' unlawful conduct explained herein, Plaintiff and other Tryad employees have, and will continue, to suffer damages in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

63. Having received less than the legal minimum wage and applicable overtime compensation, Plaintiff and other Tryad employees are entitled to, and seek to recover, all wages and penalties owed, including penalties available under Labor Code §§ 210, 558 and 558.1, as well as interest and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and 1194 and Code of Civil Procedure § 1021.5.

64. Plaintiff, on behalf of himself and other members of the putative Class, requests further relief as described in the prayer below.

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SECOND CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class Against the Defendants)

FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS

65. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

66. § 512(a) of the Labor Code provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (Emphasis added.)

67. Pursuant to Labor Code § 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

68. In pertinent part, IWC Order No. 16-2001, Subdiv. 11, states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

[...]

1 (D) If an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of this order, the employer shall
3 pay the employee one (1) hour of pay at the employee's regular rate of
4 compensation for each workday that the meal period is not provided.

5 69. A meal period generally complies with California law if the employee has at least 30
6 minutes of uninterrupted time during which the employee is relieved of any and all duty and is free to
7 leave the premises. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.)
8 California law further prohibits employers from “. . . undermining [its] formal policy of providing meal
9 breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040.)

10 70. At all relevant times, Plaintiff and other Tryad employees regularly worked at least five
11 hours per day. However, despite working at least five hours per day, Plaintiff contends that he and other
12 Tryad employees were not provided with the opportunity to take a 30-minute meal period that was free
13 from all duty and the employer's control, in part, because Defendants require Tryad employees to
14 remain at their workstations for the entire duration of their work shift so that they are readily available
15 to engage in their job duties.

16 71. Plaintiff asserts that he and other Tryad employees were routinely not provided with a
17 reasonable opportunity to take meal breaks before the fifth hour of work and/or meal breaks that were
18 free from all work-related responsibilities.

19 72. Plaintiff alleges that because of Defendants' policies and practices, it is nearly
20 impossible for him and other Tryad employees to take compliant meal periods and complete their
21 assigned duties. While Defendants are aware of this, they do not schedule meal periods for their Tryad
22 employees.

23 73. Further, Plaintiff believes that Defendants have a policy, practice, procedure, guideline
24 and/or culture of modifying Tryad employees' time records to show legally compliant meal periods. As
25 such, Defendants automatically deduct 30-minute meal periods from the time worked regardless of
26 whether Tryad employees were provided with a compliant meal break.

74. Plaintiff alleges that Tryad employees who work more than 10 hours in one workday are not regularly provided with timely, duty- free and uninterrupted second meal periods of at least 30-minutes for the same and/or similar reasons described herein.

75. Plaintiff asserts that on a rare occasion when he and other Tryad employees are provided with a meal period, the meal periods are often late, short or interrupted due to Defendants' requirement that Tryad employees engage in their job duties for the entire duration of their work shift.

76. Plaintiff contends that Defendants are aware that employees are not being provided legally compliant meal periods but fail to provide an additional hour of pay as required under Labor Code § 26.7 and do not have a mechanism for Tryad employees to document or report such.

77. As a result of Defendants' unlawful conduct alleged herein, Plaintiff and other Tryad employees have suffered, and will continue to suffer, damages in an amount which is presently unknown, but which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

78. Pursuant to Labor Code § 226.7(c) and the relevant IWC Order No. 4-2001, Subdiv. 11(D), Plaintiff and other Tryad employees are entitled to, and seek, recovery of the full amount of unpaid premium wages for non-compliant meal periods.

79. Pursuant to Labor Code § 218.6, Plaintiff and other Tryad employees are entitled and seek to recover prejudgment interest on the amount of premium wages owed.

80. Plaintiff and other Tryad employees are entitled to and seek recovery of reasonable attorneys' fees as permitted by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

81. Plaintiff, on behalf of himself and other members of the putative Class, requests further relief as described in the prayer below.

THIRD CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class Against Defendants)

FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS

82. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

83. In pertinent part, Labor Code § 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

84. IWC Order No. 16-2001, Subdiv. 12 states:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

85. During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

86. As discussed herein, Defendants regularly required Plaintiff and other Tryad employees to work in excess of four hours per day.

87. However, Plaintiff contends that as a matter of policy and practice, Defendants regularly failed to authorize or permit Tryad employees to take off-duty rest periods for every four hours worked, or major fraction thereof, in violation of California law.

1 88. Plaintiff asserts that he and other Tryad employees were required to remain readily
2 available to engage in work during rest periods because, among other things, the unbearable work
3 schedule assigned to Tryad employees did not allow time for Tryad employees to take legally
4 compliant rest periods. In addition, Tryad employees were required to carry company-issued cell
5 phones and to respond to telephone calls and messages during rest periods. Therefore, Defendants
6 failed to relinquish all control over Tryad employees or to relieve Tryad employees of all duty during
7 rest periods as required by California law.

8 89. Plaintiff asserts that Defendants did not, and do not, have a mechanism for Tryad
9 employees to document or report non-compliant rest periods.

10 90. Plaintiff further asserts that Defendants failed to pay him and other Tryad employees the
11 premium wage required by California law for non-compliant rest periods.

12 91. Plaintiff believes that Defendants know, or should know, that they failed to authorize
13 and permit Tryad employees to take legally compliant rest periods and failed to provide them with the
14 legally required premium compensation in lieu thereof.

15 92. Due to Defendants' unlawful conduct, as described herein, Plaintiff and other Tryad
16 employees have, and will continue, to suffer damages in an amount which is presently unknown, but
17 which exceeds the jurisdictional limits of this Court and which will be ascertained according to proof at
18 trial.

19 93. According to Labor Code § 226.7(c) and IWC Order No. 4-2001, Subdiv. 12(B),
20 Plaintiff and other Tryad employees are entitled to, and seek to, recover the full amount of unpaid
21 premium wages for non-compliant rest periods.

22 94. Pursuant to Labor Code § 218.6, Plaintiff and other Tryad employees are entitled to seek
23 recovery of prejudgment interest on the amount of premium wages owed.

24 95. Plaintiff and other Tryad employees are entitled to, and seek to, recover reasonable
25 attorneys' fees and costs pursuant to Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

26 96. Plaintiff, on behalf of himself and other members of the putative Class, requests further
27 relief as described in the prayer below.

1 **FOURTH CAUSE OF ACTION**

2 **(By Plaintiff Individually and on Behalf of the Class Against Defendants)**

3 **FAILURE TO PAY ALL WAGES OWED UPON SEPARATION**

4 97. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
5 paragraphs of this Complaint.

6 98. Labor Code § 200(a) defines “wages” to include “all amounts for labor performed by
7 employees...whether the amount is fixed or ascertained by the standard of time...commission basis, or
8 other method of calculation.” The term “labor” is further defined in subsection (b) to include “labor,
9 work, or service whether rendered or performed under contract, subcontract, partnership...or other
10 agreement if the labor...is performed personally by the person demanding payment.”

11 99. Pursuant to Labor Code § 201(a), when an employer discharges an employee, all earned
12 wages that remain unpaid at the time of discharge are due and payable to the employee immediately.

13 100. According to Labor Code § 202(a):

14 If an employee not having a written contract for a definite period quits
15 his or her employment, his or her wages shall become due and payable
16 not later than 72 hours thereafter, unless the employee has given 72
17 hours previous notice of his or her intention to quit, in which case the
18 employee is entitled to his or her wages at the time of quitting.
19 Notwithstanding any other provision of law, an employee who quits
without providing a 72-hour notice shall be entitled to receive payment
by mail if he or she so requests and designates a mailing address. The
date of mailing shall constitute the date of payment for purposes of the
requirement to provide payment with 72 hours of the notice of quitting.

20 101. In pertinent part, Labor Code § 203(a) further provides:

21 If an employer willfully fails to pay, without abatement or reduction,
22 in accordance with §§ 201, 201.3, 201.5, 201.9, 202, and 205.5, any
23 wages of an employee who is discharged or who quits, the wages of the
24 employee shall continue as a penalty from the due date thereof at the
same rate until paid or until an action thereof is commenced; but the
wages shall not continue for more than 30 days.

25 102. As described herein, Defendants knowingly failed to compensate their Tryad employees
26 for all time worked, failed to pay minimum wages and overtime compensation to Tryad employees, and
27 failed to pay legally required premium wages to Tryad employees for non-compliant meal and rest
28

1 periods. Although Defendants no longer employ a number of Tryad employees, Plaintiff alleges, based
2 on information and belief, that Defendants have not yet paid all wages owed to their former Tryad
3 employees as a result of such conduct.

4 103. As a consequence of Defendants' willful and deliberate refusal to furnish such wages,
5 affected employees are entitled to a maximum of 30 days' wages at their daily rate of pay as a waiting
6 time penalty, pursuant to Labor Code § 203.

7 104. Plaintiff and other Tryad employees are entitled to, and seek to, recover reasonable
8 attorneys' fees and costs pursuant to Labor Code § 218.5 and Code of Civil Procedure § 1012.5.

9 105. Plaintiff, on behalf of himself and other members of the putative Class, requests further
10 relief as described in the prayer below.

11 **FIFTH CAUSE OF ACTION**

12 **(By Plaintiff Individually and on Behalf of the Class Against Defendants)**

13 **FAILURE TO PROVIDE PAID SICK LEAVE AND WRITTEN NOTICE OF THE**
14 **AMOUNT OF SICK LEAVE AVAILABLE**

15 106. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
16 paragraphs of this Complaint.

17 107. Under Labor Code § 246(b)(1), an employee shall accrue a minimum of one hour of
18 paid sick leave for every 30 hours worked.

19 108. Labor Code § 246(b)(4) requires that an employer provide its employees with at least 24
20 hours or three days of paid sick leave per year.

21 109. Labor Code § 246(i) further requires an employer to provide employees with a written
22 notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
23 provides in lieu of sick leave, on either the employee's itemized wage statement or in a separate writing
24 provided on the designated pay date with the employee's payment of wages.

25 110. Plaintiff asserts that Defendants fail to provide him and other Tryad employees with the
26 required minimum of one hour of paid sick leave for every 30 hours worked. Additionally, because
27
28

Defendants did not account for all time worked by Tryad employees, Plaintiff and other Tryad employees were unable to accrue paid sick time at the rate provided by the Labor Code.

111. Plaintiff also alleges that Defendants violated California law by failing to provide him and other Tryad employees with written notice of their available paid sick leave, on either the itemized wage statement provided to them or in a separate writing provided on the designated pay date.

112. Plaintiff and other Tryad employees are entitled to, and seek, penalties under Labor Code § 246 and the recovery of reasonable attorneys' fees and costs pursuant to Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

113. Plaintiff, on behalf of himself and other members of the putative Class, requests further relief as described in the prayer below.

SIXTH CAUSE OF ACTION

(By Plaintiff Individually and on Behalf of the Class Against Defendants)

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

114. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all paragraphs of this Complaint.

115. Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee..."

116. Labor Code § 226(e)(1) further provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate

penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

117. According to Labor Code § 226(h), "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

118. An injury occurs where an employer fails to provide accurate information and the employee cannot "promptly and easily determine" the total number of hours worked or the "applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Labor Code § 226(a)(9)-(e)(2)(B)(i).)

119. Labor Code § 226(e)(2)(c) explains that the phrase "promptly and easily determine" means that "a reasonable person would be able to readily ascertain the information without reference to documents or information."

120. Plaintiff asserts that Defendants fail to provide him and other Tryad employees with accurate and itemized wage statements.

121. As a result of Defendants' failure to properly compensate Tryad employees for all hours worked, including without limitation, failure to pay minimum wages and overtime compensation and failure to pay premium wages for non-compliant meal and rest periods, the wage statements furnished by Defendants fail to accurately itemize and reflect Tryad employees' gross wages, the number of hours actually worked, all applicable rates of pay and their net pay.

122. The wage statements provided by Defendants also failed to include deductions, pay period information, the name of the individual and either their last four digits of their social security number or employee identification number, and the name and address of the legal entity that is the employer. Moreover, Defendants did not properly include the individual's available paid sick leave on each wage statement provided to Tryad employees.

123. As a result, Tryad employees were unable to readily ascertain from their wage statements whether they were properly compensated for all time worked. Plaintiff and other Tryad employees have therefore suffered injury under California law due to Defendants' knowing and intentional failure to furnish accurate itemized wage statements.

1 124. According to Labor Code § 226(e)(1), Plaintiff and other Tryad employees are entitled
2 to seek, and do seek to recover, liquidated damages in the amount of \$50 for the initial violation and
3 \$100 for each subsequent violation per employee, not to exceed \$4,000.

4 125. Additionally, pursuant to Labor Code § 226(h), Plaintiff and other Tryad employees are
5 entitled to seek, and therefore do seek, injunctive relief in order to ensure Defendants' compliance with
6 Labor Code § 226.

7 126. Plaintiff and other Tryad employees are also entitled to, and seek recovery of, attorneys'
8 fees and costs as provided under Labor Code §§ 218.5, 226(e)(1) and 226(h) and Code of Civil
9 Procedure § 1021.5.

10 127. Plaintiff, on behalf of himself and other members of the putative Class, requests further
11 relief as described in the prayer below.

12 SEVENTH CAUSE OF ACTION

13 **(By Plaintiff Individually and on Behalf of the Class Against the Named Corporate Defendants)**

14 FAILURE TO MAINTAIN ACCURATE RECORDS

15 128. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
16 paragraphs of this Complaint.

17 129. Pursuant to Labor Code § 226(a), an employer must keep a copy of each wage statement
18 and record of deductions on file for at least three years.

19 130. § 1174(d) of the Labor Code provides:

20 "[e]very person employing labor in this state shall keep, at a central
21 location in the state or at the plants or establishments at which employees
22 are employed, payroll records showing the hours worked daily by and the
23 wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants
25 or establishments. These records shall be kept in accordance with rules
26 established for this purpose by commission, but in case shall be kept on
27 file for not less than three years. An employer shall not prohibit an
28 employee from maintaining a personal record of hours worked, or, if paid
on a piece-rate basis, piece-rate units earned." (See also IWC Wage Order
4-2001, Subdiv. 7.)

131. As discussed herein, Plaintiff asserts that because Defendants have a policy and practice
of editing employees' timekeeping records to reflect their assigned shift rather than the time that they

1 actually worked, Defendants fail to maintain accurate records. Consequently, the paychecks and wage
2 statements Plaintiff and other Tryad employees received from Defendants did not accurately reflect the
3 total hours worked each day or the gross and net wages they actually earned. Plaintiff alleges that
4 Defendants have a policy and practice of intentionally and willfully failing to maintain Tryad
5 employees' payroll records.

6 132. Plaintiff and other Tryad employees have suffered, and continue to suffer, injuries and
7 damages as a consequence of Defendants' deliberate failure to maintain accurate records in violation of
8 California law. More specifically, as a result of Defendants' conduct, Plaintiff and other Tryad
9 employees were denied their legal right and protected interest in having accurate and complete payroll
10 records available to them.

11 133. Plaintiff and other Tryad employees are thus entitled to, and do seek, recovery of
12 damages as outlined in Labor Code § 226 (e)(1).

13 134. As provided for in Labor Code §§ 218.5 and 226(e)(1) and Code of Civil Procedure §
14 1021.5, Plaintiff and other Tryad employees are entitled to and seek to recover reasonable attorneys'
15 fees and costs.

16 135. Plaintiff, on behalf of himself and other members of the putative Class, requests further
17 relief as described in the prayer below.

18 EIGHTH CAUSE OF ACTION

19 (By Plaintiff Individually and on Behalf of the Class Against Defendants)

20 FAILURE TO REIMBURSE FOR NECESSARY WORK EXPENSES

21 136. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
22 paragraphs of this Complaint.

23 137. Labor Code § 2800 requires employers in all cases to indemnify employee losses caused
24 by the employer's want of ordinary care.

25 138. In pertinent part, Labor Code § 2802 provides:

26 (a) An employer shall indemnify his or her employee for all necessary
27 expenditures or losses incurred by the employee in direct consequence of
the discharge of his or her duties...

1 [...] 2

3 (c) For purposes of this section, the term “necessary expenditures or
4 losses” shall include all reasonable costs, including, but not limited to,
5 attorney’s fees incurred by the employee enforcing the rights granted by
6 this section.

7 139. Plaintiff asserts that because of the nature of the work, he and other Tryad employees
8 were required to wear specific clothing and boots. However, as a practice or procedure, Tryad neither
9 provides Plaintiff and other Tryad employees with such clothing and boots, nor reimburses its
10 employees for the cost of purchasing it in violation of California law.

11 140. Plaintiff and other current or former Tryad employees are entitled to, and seek,
12 reimbursement of their necessary expenditures, plus interest, including reasonable attorneys’ fees and
13 costs pursuant to Labor Code §§ 2800 and 2802.

14 141. Plaintiff and other Tryad employees are entitled to, and seek recovery of, reasonable
15 attorneys’ fees and costs as provided for under Labor Code § 218.5 and Code of Civil Procedure §
16 1021.5.

17 142. Plaintiff, on behalf of himself and other Tryad employees, requests further relief as
18 described in the below prayer.

19 NINTH CAUSE OF ACTION

20 (By Plaintiff Individually and on Behalf of the Class Against Defendants)

21 VIOLATION OF THE UNFAIR COMPETITION LAW

22 143. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
23 paragraphs of this Complaint.

24 144. As codified in Business and Professions Code §§ 17200 *et seq.*, California’s Unfair
25 Competition Law (“UCL”) broadly prohibits “any unlawful, unfair or fraudulent business act or
26 practice.”

27 145. A cause of action may be brought under the UCL if a business practice violates some
28 other law. The “unlawful” prong of the UCL effectively deems a violation of the underlying law a per
se violation of Business and Professions Code § 17200. (*Cel-Tech Commc’ns, Inc. v. Los Angeles*

1 *Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180.) Virtually any law or regulation – federal or state,
2 statutory, or common law – can serve as a predicate for a § 17200 “unlawful” violation. (*Farmers Ins.*
3 *Exch. v. Superior Court* (1992) 2 Cal.4th 377, 383.)

4 146. The “unfair” prong of the UCL does not, however, require a practice to be specifically
5 proscribed by any law. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 20 Cal.4th 1134, 1143
6 (internal citations omitted).) Pursuant to the California Supreme Court, the “unfair standard” is
7 intentionally broad to give maximum discretion to courts in prohibiting new schemes to defraud. (*Cel-*
8 *Tech Commc’ns, Inc., supra*, 20 Cal.4th at 180-81.)

9 147. Under the UCL, a “fraudulent” business act or practice is one where “members of the
10 public are likely to be deceived.” (*Blakemore v. Superior Court* (2005) 129 Cal. App. 4th 36, 49.) A
11 showing of actual deception, reasonable reliance, or damages is not required. (*Ibid.*) The fraudulent
12 prong may be used to attack the deceptive manner in which otherwise lawful contract terms are
13 presented to an individual. (*Boschma v. Home Loan Ctr., Inc.* (2011) 198 Cal.App.4th 230, 253.) As
14 such, even a true statement may be unlawful under § 17200 if it is “couched in such a manner that is
15 likely to mislead or deceive..., such as by failing to disclose other relevant information.” (*Ibid.*)

16 148. As discussed herein, Defendants’ business practices violate all three prongs of
17 California’s UCL.

18 Unlawful

19 149. Defendants violated the Labor Code by failing to properly compensate Tryad employees
20 for all hours worked. Because Defendants’ failure to adequately compensate employees clearly violates
21 California law, their conduct is a per se violation of the UCL. *Cel-Tech Commc’ns, Inc.*, 20 Cal.4th at
22 180. Defendants also failed to pay premium wages to their Tryad employees for non-compliant meal
23 and rest periods as required by California law. Plaintiff is also informed and believes that Defendants
24 failed to pay all wages owed to Tryad employees upon termination of the employment relationship in
25 violation of California law. Defendants further failed to furnish itemized and accurate wage statements
26 that accurately reflected the total hours actually worked and gross and net wages earned by Tryad

1 employees, among other things. Therefore, Defendants have clearly engaged in unlawful business
2 practices pursuant to Business and Professions Code §§ 17200 *et seq.*

3 Unfair

4 150. Defendants' policies and practices that fail to provide Tryad employees with minimum
5 wages and overtime compensation for all hours worked are unfair because they prevent Tryad
6 employees from timely receiving wages owed to them in violation of California's public policy
7 favoring the prompt payment of wages.

8 151. Defendants' failure to provide Tryad employees with legally compliant meal and rest
9 periods, or compensation in lieu thereof, is unfair because it knowingly strips Tryad employees of
10 rights and compensation afforded to them under the Labor Code.

11 Fraudulent

12 152. Defendants' practice of providing Tryad employees with inaccurate wage statements
13 constitutes a fraudulent business practice under the UCL because Plaintiff and other Tryad employees
14 are likely to be, and actually are, deceived as to whether they were paid for all time worked.

15 153. Similarly, Defendants' failure to maintain accurate records also constitutes a fraudulent
16 business practice as the intentional inaccuracies mislead Tryad employees as to their total hours worked
17 and wages earned.

18 154. As a direct and proximate result of Defendants' unlawful, unfair, and fraudulent
19 business practices, Plaintiff and other current or former Tryad employees have suffered injury-in-fact
20 and have lost wages rightfully owed to them.

21 155. Through their unlawful, unfair, and fraudulent conduct, Defendants have been unjustly
22 enriched by receiving and continuing to receive benefits and profits at the expense of Tryad employees.
23 Pursuant to Business and Professions Code §§ 17200 *et seq.*, Defendants should therefore be enjoined
24 from such conduct, made to disgorge all ill-gotten gains, and restore to Plaintiff and other Tryad
25 employees the wages wrongfully withheld from them.

26 156. The unlawful, unfair, and fraudulent conduct alleged herein has continued and there is
27 no indication that Defendants will refrain from such activity in the future. Plaintiff believes and alleges
28

1 that if Defendants are not enjoined from the conduct described herein, they will continue to violate
2 California law at the expense of Tryad employees. Accordingly, Plaintiff requests that the court issue a
3 preliminary and permanent injunction against Defendants.

4 157. Plaintiff, on behalf of himself and other Tryad employees, requests further relief as
5 described in the prayer below.

6 **NINTH CAUSE OF ACTION**

7 **(By Plaintiff in his Representative Capacity Against All Defendants)**

8 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

9 158. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, all
10 paragraphs of this Complaint.

11 159. Pursuant to PAGA, any provision of the Labor Code allowing for a civil penalty to be
12 assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards,
13 agencies, or employees, for a California Labor Code violation, may be recovered through a civil action
14 brought by an aggrieved employee on behalf of himself or herself, and other current or former
15 employees. Under Labor Code § 2699(i), such civil penalties are in addition to any other relief provided
16 for in the Labor Code and must be allocated 75% to the LWDA and 25% to the aggrieved employees.

17 160. Defendants employed Plaintiff and each of the current or former employees he
18 represents in the state of California during all, or a portion of, the statute of limitations period before
19 Plaintiff filed his notice with the LWDA.

20 161. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants
21 within the year prior to filing PAGA notice and suffered one or more violations of the Labor Code.

22 162. Plaintiff has complied with the notice requirements outlined in Labor Code § 2699.3. On
23 December 23, 2021, Plaintiff submitted notice to the LWDA and Defendants informing them of
24 Defendants’ alleged Labor Code violations pursuant to PAGA. (See **Exhibit 1.**) The LWDA had sixty-
25 five (65) days to provide notice of whether it intended to investigate the alleged violations. To date, the
26 LWDA has not provided notice of whether it intends to investigate the alleged violations. Plaintiff thus
27 has the right to pursue such claims in his representative capacity pursuant to Labor Code § 2699.3.

163. As set forth herein, Defendants have committed, and continue to commit, numerous violations for which the Labor Code entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, the PAGA Collective, the state of California and the general public, civil penalties, as well as attorneys' fees and costs for Defendants' alleged Labor Code violations.

164. Plaintiff, in his representative capacity on behalf of himself and the PAGA Collective, is entitled to seek, and does so seek, to recover civil penalties for violations of the following Labor Code provisions in this representative action:

- a. Failure to pay minimum and overtime wages in violation of Labor Code §§ 204, 210, 226.2, 510, 1194, 1197, 1197.1, 1198, 1199 and IWC Wage Order No. 16-2001;
- b. Failure to provide legally compliant meal periods or compensation in lieu thereof in violation of Labor Code §§ 204, 226.7, 512 and IWC Wage Order No. 16-2001;
- c. Failure to provide legally compliant rest periods or compensation in lieu thereof in violation of Labor Code § 204, 226.7 and IWC Wage Order No. 16-2001;
- d. Failure to pay all wages owed upon termination in violation of Labor Code §§ 201-203;
- e. Failure to provide paid sick leave and written notice of the amount of paid sick leave available in violation of Labor Code §246;
- f. Failure to timely furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3 and IWC Wage Order No. 16-2001;
- g. Failure to maintain accurate timekeeping and payroll records in violation of Labor Code §§ 226(a), 1174 and IWC Wage Order No. 16-2001;
- h. Failure to reimburse for necessary work expenses in violation of Labor Code §§ 2800 and 2802 and IWC Wage Order No. 16-2001.

165. For violations of Labor Code §§ 510 and 512, in addition to any other penalty provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee

1 for the initial violation and \$100 per pay period for each underpaid employee for each subsequent
2 violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours
3 and days of work in any order of the IWC. Under Labor Code § 558.1, “Any employer or other person
4 acting on behalf of an employer, who violates, or causes to be violated, any provision regulating
5 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
6 violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the
7 employer for such violation.” Therefore, Plaintiff, in his representative capacity on behalf of himself
8 and the PAGA Collective is entitled to seek, and does seek, such civil penalties.

9 166. Labor Code § 1197.1 subjects an employer, or any other person acting either
10 individually or as an officer, agent, or employee of another person, to a civil penalty of \$100 for any
11 initial violations for each underpaid employee and \$250 for each underpaid employee for each
12 subsequent violation, restitution of wages and liquidated damages payable to the employee and any
13 applicable penalties imposed by Labor Code § 203 for paying or causing to pay an employee less than
14 the minimum wage imposed by California law. Plaintiff, in his representative capacity on behalf of
15 himself and the PAGA Collective is entitled to seek, and does seek, such civil penalties.

16 167. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an
17 initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of
18 Labor Code § 226(a). Plaintiff and other Tryad employees in the state of California are thus entitled to
19 seek, and do seek, the described civil penalties.

20 168. For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5
21 imposes a civil penalty of \$500. Plaintiff, in his representative capacity on behalf of himself and the
22 PAGA Collective is entitled to, and therefore seeks, such civil penalty.

23 169. In addition to any other penalty, Labor Code § 210 provides that any person who fails to
24 pay wages as provided in §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to
25 a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each
26 subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each
27

1 employee, plus 25% of the amount unlawfully withheld. Plaintiff and other Tryad employees in the
2 state of California are thus entitled to seek, and therefore do seek, the described civil penalties.

3 170. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
4 the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor
5 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
6 Labor Code §§ 201, 202, 203, 204, 210, 226, 226(a), 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 432,
7 510, 512, 1102.5, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and/or 2802. Thus, Plaintiff, on
8 behalf of himself and the PAGA Collective, seeks the above-described civil penalties.

9 171. Pursuant to Labor Code § 2699(g)(1) an employee who prevails in a civil action brought
10 pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. Therefore,
11 Plaintiff, in his representative capacity, is entitled to seek, and does so seek, attorneys' fees and costs in
12 relation to this action.

13 172. Plaintiff, in his representative capacity, on behalf of himself and other members of the
14 PAGA Collective are also entitled to seek, and do seek, to recover reasonable attorneys' fees as
15 provided by Labor Code §§ 218.5, 1193.6, 1194 and Code of Civil Procedure § 1021.5.

16 173. Plaintiff, on behalf of himself and the PAGA Collective, requests further relief as
17 described in the prayer below.

18 **PRAYER FOR RELIEF**

19 Plaintiff prays for judgment against Defendants and in favor of the above-defined Class and
20 Subclasses as follows:

- 21 1. For an order determining that this action may be maintained as a class action
22 with the named plaintiff as the class representative;
- 23 2. For the attorneys appearing on the above caption to be named class counsel;
- 24 3. For an order determining that this action may be maintained as a representative
25 action with the named plaintiff as the representative;
- 26 4. For all wages and benefits due to Plaintiff and other Tryad employees
27 currently and formerly employed by Defendants pursuant to California law;

5. For all minimum wages and overtime compensation owed pursuant to Labor Code §§ 510, 1194, 1197.1, and any other applicable law;
6. For premium wages under Labor Code § 226.7 and any other applicable law;
7. For damages pursuant to Labor Code §§ 226, 226.8(c), 246, Civil Code § 3281, and any other applicable law;
8. For all liquidated damages, pursuant to Labor Code §§ 226(e), 1194.4(a), 1197.1, and/or other applicable law;
9. For civil penalties, pursuant to Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2699(f) and/or other applicable law;
10. For PAGA civil penalties pursuant to Labor Code §§ 2698 *et seq.*, and/or other applicable law;
11. For injunctive relief pursuant to Labor Code § 266(h), Business and Professions Code § 17203 and any other applicable law;
12. For restitution for Defendants' unfair, unlawful, and fraudulent business practices;
13. For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5, 266(h), 266(e)(1), 1194, 2802, Code of Civil Procedure § 1021.5, the "common fund" theory, the "substantial benefit" theory and any other applicable law, theory or doctrine;
14. For pre-judgment and post-judgment interest as provided by California law;
15. For appropriate equitable relief pursuant to California law; and
16. For any and all other relief the Court may deem just and proper.

Dated: March 10, 2022

CLARK LAW GROUP

By: *Alicja Urtnowski*
R/Craig Clark
Alicja A. Urtnowski
Dawn M. Berry
Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all issues triable to a jury.

3
4 Dated: March 10, 2022

CLARK LAW GROUP

5
6 By: *Alicja Urtnowski*
7 R. Craig Clark
8 Alicja A. Urtnowski
9 Dawn M. Berry
10 *Attorneys for Plaintiff*
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Exhibit 1



Clark Law Group

• 3258 Fourth Avenue • San Diego, California 92103 •

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• www.clarklawyers.com •

Via Electronic Submission

December 23, 2021

California Labor and Workforce Development Agency
ATTN: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: **Owen Sortino v. Tryad Service Corporation, J.D. Rush Company, Inc.,
and Deborah Patrick**

Notice of Labor Code Violations Pursuant to Labor Code § 2698

Dear Administrator,

The purpose of this correspondence is to notify you that Owen Sortino ("Mr. Sortino"), on behalf of himself and all others similarly situated, intends to assert the legal rights granted to him under the Private Attorneys General Act (the "Act"), as set forth in California Labor Code ("Labor Code") §§ 2698 et seq. This correspondence includes the current facts and theories to support the violations alleged herein. This correspondence will also be sent to the agent for service of process for Tryad Service Corporation, J.D. Rush Company, Inc., and Deborah Patrick (collectively "Tryad") via certified mail. Therefore, this correspondence serves to satisfy the notice requirements of the Act. By uploading and sending this correspondence in the manner set forth in the Act, Mr. Sortino is complying with the Act's statutory notice requirements.

Factual Statement and Theories of Liability

Mr. Sortino was employed by Tryad as a non-exempt hourly employee from approximately April 2021 to October 2021. Throughout his employment, Mr. Sortino has been assigned to work as a Gravel Pack Tool Hand at various worksites in California.

Tryad Service Corporation is a California corporation that does business in California. Specifically, it is in the business of providing services in the threading industry. Moreover, Tryad is a "world-class" supplier of down-hole requirements for the oil and gas industry. Also, Tryad's wide range of services include mill slotting, round hole perforating, wire wrap screen lining, gravel packing, and the use of down-hole tools. See <https://jdrush.com/associated-companies/tryad/>.

J.D. Rush Company, Inc. is a parent company of multiple subsidiaries, including Tryad Service Corporation. JD Rush Company, Inc. is in the business of providing services in the oil and gas industry. See <https://jdrush.com>.

During Mr. Sortino's employment he reported to Deborah Patrick, his supervisor and/or Human Resources Manager. Ms. Patrick is believed to be employed by Tryad and is alleged to have acted on behalf of Tryad and/or to have acted individually or as an officer, agent, or employee of Tryad. Therefore, Ms. Patrick may be liable for the violations of law described herein. *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 811-813; Labor Code §1197.1(a).

Mr. Sortino asserts that he and other individuals currently or formerly employed by Tryad in the state of California as non-exempt employees (collectively referred to herein as "Tryad employees"), were subject to the same and/or similar policies, practices, guidelines, procedures and/or culture described herein. Mr. Sortino further asserts that he and all other Tryad employees have suffered, and will continue to suffer, the same and/or similar Labor Code violations described herein.

Any and all claims alleged in this correspondence are asserted on behalf of Mr. Sortino and all other current or former Tryad employees in California during the applicable statutory period and who have suffered the same and/or similar Labor Code violations alleged herein, as well as any other violations of the PAGA arising out of their employment with Tryad that may be later discovered since investigation is ongoing.

Because investigation is ongoing, Mr. Sortino reserves his right to assert any and all related facts, claims and/or theories discovered after the sending of this correspondence on behalf of himself and the current or former Tryad employees that he seeks to represent against Tryad and/or other persons that may be discovered after the sending of this correspondence. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of Tryad, as well as those persons who caused and/or concurrently contributed to the various acts and/or omissions of each and every one of the others, including Tryad, in proximately causing the wrongful conduct, harm, and/or damages

alleged herein or otherwise participated in and/or ratified any or all of the acts or omissions complained of herein, and those who are acting within the authority and scope of Tryad. *Atempa v. Pedrazzani*, 27 Cal.App.5th at 811-813.

I. Tryad Failed to Pay Minimum, Regular, Overtime and/or Double-Time Wages in Violation of Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199 and IWC Wage Order No. 16-2001.

Labor Code § 204 establishes the fundamental right of an employee in California to be timely paid wages for their work. Pursuant to Labor Code § 1197, an employer is prohibited from paying or causing its employees to be compensated at a rate less than the fixed minimum, as set by the commission, for all time worked. See also Labor Code § 1199 (making such conduct a misdemeanor); IWC Wage Order No. 16-2001, subdiv. 4. Additionally, it is unlawful for an employer to employ persons for more than eight hours per day and/or forty hours per workweek without compensating them at the rate of one and one-half or two times the employee's regular pay rate, depending on the number of hours worked. Labor Code §§ 510, 1198; see also IWC Wage Order No. 16-2001, subdiv. 3(A). Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Labor Code § 510. Pursuant to Labor Code § 1194, an employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked. Moreover, any employer who causes an employee to be paid a wage lower than that of the fixed minimum is required to pay a civil penalty. Labor Code § 1197.1; see also IWC Wage Order No. 16-2001, subdiv. 20(A).

Mr. Sortino asserts that as a policy, practice, guideline, procedure and/or culture Tryad does not properly compensate its employees for all hours worked. Mr. Sortino contends that Tryad required him and other employees to perform work on behalf of Tryad without compensation. As a policy, practice, guideline, procedure and/or culture, Tryad requires its employees to clock-in and out of their job using ADP platform. Mr. Sortino asserts that Tryad has a policy, practice, guideline, procedure and/or culture of editing its employees' clock-in and clock-out records so that they do not receive the minimum and/or overtime/double-time compensation they are entitled to. Thus, Tryad compels, encourages and/or otherwise directs supervisory positions to modify Tryad employees' time records after the fact (i.e. shave time). As a result, Tryad employees, including Mr. Sortino, regularly engage in work-related activities during the time that Tryad automatically deducts from their time worked. Since Tryad does not compensate its employees for such time, Tryad does not compensate its employees for all time worked as required by California law.

Mr. Sortino also contends that as a policy, practice, guideline, procedure and/or culture, Tryad regularly requires its employees to work more than 8 hours per day and/or 40 hours per week without being paid the appropriate overtime or double time. Because Tryad failed to appropriately pay overtime and/or double time compensation to employees who worked more than 8 hours per day and/or 40 hours per week, Tryad did not pay its employees in accordance with California law.

Additionally, Mr. Sortino alleges that Tryad fails to timely pay all earned wages. For instance, the paychecks Mr. Sortino and other employees receive from Tryad do not include compensation for all hours worked, as described herein. Mr. Sortino asserts that despite notifying Tryad of the error, Tryad did not promptly remedy the issues by paying all wages earned and due.

Based on the foregoing, Mr. Sortino asserts that Tryad engaged in conduct that violated California law by failing to compensate him and other Tryad employees appropriately.

II. Tryad Failed to Provide Legally Compliant Meal Periods or Compensation in Lieu Thereof, in Violation of Labor Code §§ 204, 226.7 and 512 and IWC Wage Order No. 16-2001

Labor Code § 512 states, “[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes.” Additionally, an employer is not permitted to employ a person for a work period of more than ten hours per day without providing the employee with a second meal period of at least thirty minutes. Labor Code § 512. Meal periods of no less than 30 minutes must be provided before the end of the employee's fifth and tenth hours of work, respectively. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041. California law further obligates employers to completely relieve its employees of all work and work-related responsibilities during the entirety of the legally required meal periods. *Id.* at 1040. In order to comply with their meal period obligations, employers must also relinquish all control over its employees, and cannot impede or discourage its employees from taking uninterrupted, work-free meal periods. *Id.* An employee who is required to perform any work-related task at any point during his or her meal period has not received a meal period in accordance with California law. Labor Code § 226.7.

If an employer fails to provide an employee with a legally compliant meal period, the employer must pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that a legally compliant meal period was not provided. Labor Code § 226.7; IWC Wage Order

No. 16-2001, subdiv. 11(D). Premium wages under Labor Code § 226.7 are wages due payable in accordance with the Labor Code. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114; see also Labor Code § 204.

As a policy, practice, guideline, procedure and/or culture, Tryad regularly requires its employees to work more than 5 hours per workday. However, despite regularly working more than 5 hours per workday, Tryad employees, such as Mr. Sortino, were not provided with the reasonable opportunity to take meal periods that occurred before the 5th hour of work and/or that were free from all work and work-related responsibilities during the entirety of the 30-minute meal period.

Mr. Sortino asserts that the demanding work schedules assigned to Tryad employees did not allow time for legally compliant meal periods. Moreover, Mr. Sortino alleges that as a policy, practice, guideline, procedure and/or culture Tryad does not schedule any meal periods for its employees. Mr. Sortino therefore contends that Tryad has a policy, practice, guideline, procedure and/or culture that requires Tryad employees to engage in their job duties for the entire duration of their work shift.

As a result, Tryad employees were not provided with the opportunity to take meal periods that were free from work-related responsibilities. By imposing unbearable work schedules onto its employees, Tryad compelled, encouraged and/or otherwise directed its employees to work through their meal periods.

Mr. Sortino further contends that Tryad does not have a procedure for its employees to document non-compliant meal periods. As a result, Tryad does not properly compensate its employees for non-compliant meal periods.

Further, Mr. Sortino believes that Tryad has a policy, practice, procedure, guideline and/or culture of modifying Tryad employees time records to show legally compliant meal periods. As such, Tryad automatically deducts 30 minute meal periods from the time worked regardless of whether Tryad employees were provided with a compliant meal break.

Furthermore, Mr. Sortino alleges that Tryad employees who work more than 10 hours in one workday are not regularly provided with timely, duty- free and uninterrupted second meal periods of at least 30-minutes for the same and/or similar reasons described herein.

Mr. Sortino asserts that on a rare occasion when he and other Tryad employees are provided with a meal period, the meal periods are often late, short or

interrupted. Mr. Sortino contends that this is due in part to Tryad's requirement that its employees be readily available to perform their work duties during meal periods, as described herein.

Based on the foregoing, Mr. Sortino contends Tryad has failed to comply with its meal period obligations under California law by not providing its employees with legally compliant meal periods or compensation in lieu thereof.

III. Tryad Failed to Provide Legally Compliant Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code §§ 204, 226.7 and IWC Wage Order No. 16-2001

IWC Wage Order No. 16-2001, subdiv. 12(A) requires employers to authorize and permit off-duty rest periods for every four hours worked, or major fraction thereof. Unless an employer relieves its employees of any and all work-related duties and also relinquishes all control over how its employees spend their time during rest periods, the employer has not authorized and permitted lawful off-duty rest periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. If an employer fails to provide an employee with an off-duty rest period in accordance with California law, the employer is required to pay an employee one additional hour of pay at the employee's regular rate of compensation for each workday in which a lawful rest period was not provided. Labor Code § 226.7; See also IWC Wage Order No. 16-2001, subdiv. 12(B). Premium wages under Labor Code § 226.7 are wages due payable in accordance with the Labor Code. *Murphy*, 40 Cal.4th at 1103-1114; see also Labor Code § 204.

Mr. Sortino and other Tryad employees typically work more than 4 hours per workday. However, Mr. Sortino alleges that as a policy, practice, guideline, procedure and/or culture, Tryad regularly fails to authorize and permit Tryad employees to take off-duty rest periods for every four hours worked, or major fraction thereof, in violation of California law. Mr. Sortino contends he and other Tryad employees were denied legal rest periods largely due to Tryad's requirement that Tryad employees are to be readily available to perform their work duties at all times, as discussed herein.

Mr. Sortino further asserts that Tryad does not have a policy, practice, guideline, procedure and/or culture for Tryad employees to record non-compliant rest periods and/or fails to compensate Tryad employees the required rest period premium for non-compliant rest periods. Tryad's conduct thus constitutes a violation of California law.

IV. Tryad Failed to Timely Pay Wages Owed Upon Termination in Violation of Labor Code §§ 201-203

Under Labor Code § 201, when an employer discharges an employee, all wages earned and unpaid at the time of discharge are immediately due and payable. Similarly, if an employee does not have a written contract for a definite period and quits his or her employment, the employee's wages are due and payable no later than 72 hours thereafter, unless the employee has given 72-hours previous notice of his/her intention to quit, then the employee is entitled to his/her wages at the time of quitting. Labor Code § 202(a). If an employer willfully fails to pay all wages owed to an employee in accordance with Labor Code §§ 201 and 202, the employee's wages are to continue as a penalty, equal to one day of wages at the employee's regular rate of pay, starting from the date at which such wages were due until paid or until an action is commenced. Labor Code § 203. However, the wages are not to continue for more than a period of thirty days. *Id.*

Mr. Sortino contends that Tryad has a policy, practice, guideline and/or culture of not timely paying all wages owed upon discharge nor paying the required waiting time penalties. For instance, as discussed herein, Tryad failed to compensate its employees for all hours worked, failed to pay the appropriate overtime/double-time wages to Tryad employees for hours worked in excess of eight per day and/or forty per week, and failed to pay the required meal and/or rest period premiums to Tryad employees for non-compliant meal and/or rest periods.

Mr. Sortino therefore contends that Tryad failed to pay all wages owed to former Tryad employees who separated from Tryad within the statutory period in violation of California law.

V. Tryad Failed to Provide Paid Sick Days and Written Notice of the Amount of Sick Leave Available in Violation of Labor Code § 246.

California law requires that an employer provide 24 hours (or 3 days) of paid sick leave per year for full-time employees. Labor Code § 246. Employees are to earn a minimum of 1 hour of paid leave for every 30 hours worked. *Id.*

Mr. Sortino alleges that Tryad has a policy, practice, guideline, procedure and/or culture of failing to provide Tryad employees with one hour of paid sick leave for every 30 hours worked in accordance with California law.

Mr. Sortino further alleges that Tryad also failed to provide Tryad employees with paid sick days since they were unable to accrue any such paid sick days at the rate provided by law as a result of Tryad's failure to account for all time worked.

Mr. Sortino also contends that Tryad has a policy, practice, procedure, guideline and/or culture of failing to provide written notice to Tryad employees of their available sick leave, as such amounts are not included on the wage statements provided to Tryad employees, nor are they provided with the information in separate writing on the designated pay date along with their wages. Accordingly, Tryad has failed to comply with California law.

VI. Tryad Failed to Furnish Legally Compliant Wage Statements in Violation of Labor Code §§ 226, 226.3 and IWC Wage Order No. 16-2001

An employer is required to provide its employees with accurate and itemized wage statements. Labor Code § 226(a). Pursuant to Labor Code § 226(a), each wage statement must show “(1) gross wages earned, (2) total hours worked by the employee...(4) all deductions...(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate...” See also IWC Wage Order No. 16-2001, subdiv. 7(A).

Tryad failed to comply with Labor Code § 226 on each and every wage statement provided to Mr. Sortino and other current or former Tryad employees. Mr. Sortino contends that the wage statements furnished by Tryad fail to accurately reflect the gross wages and/or net wages earned due to Tryad's failure to compensate its employees for all time worked, failure to pay the appropriate overtime/double-time compensation to Tryad employees for hours worked beyond eight hours per day and/or forty hours per week, and failure to pay premium wages to Tryad employees for non-compliant meal and/or rest periods, as discussed herein. Therefore, the wage statements provided to Mr. Sortino and other Tryad employees are non-compliant.

The wage statements provided by Tryad also failed to properly include the pay period information for each wage statement, the accurate rate of pay, the required available sick time and/or the name of the legal entity that employed the employees in violation of California law.

During the statutory period, Tryad thus failed to comply with the requirements outlined by California law by providing incomplete and inaccurate wage statements to all current or former Tryad employees.

VII. Tryad Failed to Maintain Accurate Payroll Records in Violation of California Labor Code §§ 226(a) and 1174 and IWC Wage Order No. 16-2001

Labor Code § 1174 requires every employer to “keep a recording showing the names and addresses of all employees employed...” Labor Code § 1174 further requires “[e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily and the wages paid. Such records are to be kept according to the rules established by the commission for such purpose and must be kept on file for no less than three years. *Id.* An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. See also IWC Wage Order No. 16-2001, subdvs. 7, 19 and 20.

As discussed herein, Tryad has a policy, practice, guideline, procedure and/or culture of failing to maintain accurate employee information and payroll records which accurately reflect, for example, the gross and net wages earned as well as the total hours of time worked each day by Mr. Sortino and other Tryad employees.

Additionally, Mr. Sortino is informed and believes that Tryad fails to maintain a copy of all documents related to the hiring and/or employment of Tryad employees, and/or fails to provide Tryad employees with the opportunity to inspect or copy such documents upon request in violation of California law. Therefore, Mr. Sortino contends that Tryad failed to comply with Labor Code §§ 226 and 1174.

VIII. Tryad Failed to Reimburse Non-Exempt Employees for Necessary Work Expenses in Violation of Labor Code §§ 2800 and 2802 and IWC Wage Order No. 16-2001

Labor Code § 2800 states that an employer shall indemnify employee losses caused by the employer's want of ordinary care. Accordingly, pursuant to Labor Code § 2802, an employee is entitled to reimbursement from his or her employer for all expenses or losses incurred as a result of employment.

Mr. Sortino asserts that because of the nature of his work, he was required to wear specific clothing and boots. However, as a practice or procedure, Tryad neither provides Mr. Sortino and other Tryad employees with such clothing and boots, nor reimburses its employees for the cost of purchasing it in violation of California law.

IX. Mr. Sortino May be Entitled to Attorneys' Fees and Costs

The Act provides that "any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Labor Code § 2699(g)(1). Therefore, in the event that Mr. Sortino and/or another similar representative is successful in a civil action against Tryad, he is entitled to an award of attorneys' fees and costs. See also Labor Code §§ 218.5, 1194, 1193.6; Code Civ. Proc. § 1021.5.

Conclusion

As described herein, Mr. Sortino contends that he constitutes an "aggrieved employee" as the term is defined by Labor Code § 2699(c). Mr. Sortino alleges that the current or former Tryad employees that he seeks to represent also constitute "aggrieved employees" under the statute. As discussed herein, Tryad violated the Labor Code and the relevant IWC Wage Order and thereby deprived Mr. Sortino and other current or former Tryad employees of their statutory rights and protections afforded to them. Mr. Sortino has thus satisfied the prerequisites of the Act to serve as a representative of all current or former Tryad employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions both set forth herein as well as for those which may be later discovered on behalf of himself and all others similarly situated.

Accordingly, if the Labor and Workforce Development Agency neither acts, nor declines to intervene within sixty-five days from the date of this correspondence, Mr. Sortino may elect to initiate and/or amend a civil action, on behalf of himself and all others similarly situated, to include the persons and allegations described herein and/or those discovered after sending this correspondence, subject to Labor Code §§ 2698 et seq., as well as other related claims arising out of their employment with Tryad.

Sincerely,

CLARK LAW GROUP

A handwritten signature in black ink that reads "Alicja Urtnowski". The signature is written in a cursive, flowing style.

R. Craig Clark
Alicja A. Urtnowski
Dawn M. Berry

cc: Tryad Service Corporation
c/o Teri Seely
5900 East Lerdo Highway
Shafter, CA 93263

J.D. Rush Company, Inc.
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