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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Christina Dixon, Deputy

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\$435 PAID

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

HECTOR O. ACOSTA, individually, and on
behalf of all others similarly situated and
aggrieved,

Plaintiff,

vs. TURLOCK WALNUT COMPANY,
INC., and DOES 1 through 10, inclusive,

Defendants.

CASE NO. CV-22-001051

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Speiller, Stacy

This case has been assigned to Judge

Dept. 22

Department _____, for all purposes including Trial.

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2. On information and belief, defendant TURLOCK WALNUT COMPANY, INC. is

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES

4. This court possesses original subject matter jurisdiction over this matter. Venue is in this judicial district because Defendant transacts business in this district, and some of Plaintiff's alleged conduct occurred in this judicial district, as Plaintiff performed job duties in the County of San Bernardino, for which she was not properly compensated by Defendant.

5. Plaintiff worked for Defendant as a non-exempt employee. Plaintiff seeks to bring this action as a class action under Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: “All individuals employed by Defendant as a non-exempt employee, however titled, in the State of California during the period commencing on the date of Plaintiff’s hiring and continuing through the date of Plaintiff’s termination, or four years preceding the filing of this complaint.”

7. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because the common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether Defendant properly calculated and paid all amounts due to the class members for wages earned, including overtime wages, under

1 California law, (2) whether Defendant violated the California Labor Code and/or IWC Wage
2 Orders by withholding wages, including overtime wages, from the class members, (3) whether
3 Defendant provided the class members with all required meal periods on a fully-compliant basis,
4 or compensation in lieu thereof; (4) whether Defendant provided the class members with all
5 required rest periods on a fully-compliant basis, or compensation in lieu thereof; (5) whether
6 Defendant provided the class members with accurate itemized wage statements; (6) whether
7 Defendant timely paid the class members all wages due upon separation of employment, (7)
8 whether Defendant's failure to timely pay all wages due upon termination of employment was
9 willful; and (8) whether Defendant violated California Business and Professions Code sections
10 17200, et seq.

11 8. Numerosity. The plaintiff class is so numerous that the individual joinder of all
12 members is impractical under the circumstances of this case. While the exact number of class
13 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least
14 100 individuals.

15 9. Typicality. Plaintiff's claims are typical of the claims of the class members.
16 Plaintiff suffered a similar injury as the other class members as a result of Defendant's common
17 practices regarding the calculation and payment of wages, including overtime wages, provision of
18 wage statements, payment of wages due upon termination, and Defendant's failure to honor
19 requests to inspect or copy personnel and payroll records. In addition, Plaintiff will fairly and
20 adequately protect the interests of the class members. Plaintiff has no interests adverse to the
21 interests of the other class members.

22 10. Superiority. A class action is superior to other available means for the fair and
23 efficient adjudication of this controversy since individual joinder of all members of the class is
24 impractical. Class action treatment will permit a large number of similarly situated persons to
25 prosecute their common claims in a single forum simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense that numerous individual actions would engender.
27 Furthermore, as the damages suffered by each individual member of the class may be relatively
28 small, the expenses and burden of individual litigation would make it difficult or impossible for

individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is not superior, given the lack of discovery in such proceedings, the fact that there are fewer available remedies, and the losing party has the right to a trial de novo in the Superior Court.

FIRST CAUSE OF ACTION

(Recovery of Unpaid Wages – Labor Code §§ 1194 and 1194.2)

11. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 10.

12. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. Plaintiff and the class members regularly worked hours for which they were not compensated by Defendant as required by California law, including hours worked “off the clock” including without limitation performing cleaning/closing duties after having clocked out.

13. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled to recover all unpaid minimum wages and liquidated damages, plus attorneys’ fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

(Recovery of Unpaid Overtime – Labor Code § 1194)

14. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 13.

15. California law provides employees in California must be paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all hours worked in excess of 40 per week or 8 per day, unless they are exempt. Plaintiff and the class members, all of whom were non-exempt, regularly worked more than 40 hours per week and/or 8 per day, but were not paid all overtime wages due and owing under California law, including overtime hours worked “off the clock”

1 including without limitation performing cleaning/closing duties after having clocked out. .

2 16. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled
3 to recover all unpaid overtime wages, plus attorneys' fees and costs, in an amount to be proved at
4 trial.

5 THIRD CAUSE OF ACTION

6 (Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

7 17. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 16.

9 18. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
10 Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period free
11 from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all
12 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the
13 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
14 no more than six (6) hours, the required meal period may be waived by mutual consent of the
15 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
16 but no more than twelve (12) hours, the required second meal period may be waived by mutual
17 consent of the employer and employee, but only if the first meal period was not waived.
18 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
19 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
20 the employer fails to properly record a valid meal period, it is presumed no meal period was
21 provided.

22 19. Plaintiff and similarly situated and aggrieved employees regularly worked periods
23 of more than five and ten hours in a workday without being provided mandatory thirty-minute,
24 duty-free meal periods. Upon information and belief, Defendant did not advise Plaintiff and other
25 similarly situated and aggrieved employees of their right to, timing, or number of meal periods.
26 For example, Plaintiff and similarly situated and aggrieved employees did not receive all required
27 first meal periods, or received them on a non-compliant basis as meal periods regularly were less
28 than 30 minutes or did not start until after the fifth hour of work, Defendant further did not

1 provide mandatory meal periods to Plaintiff and other similarly situated and aggrieved employees
2 on shifts longer than 10 hours. Per Defendant's illegal meal period policy/practice, Defendant
3 further failed to pay Plaintiff and similarly situated and aggrieved employees an additional hour
4 of wages at their regular rates of pay for each workday a meal period was not provided or was not
5 compliant with all requirements of the Labor Code and/or Wage Orders.

6 20. Defendant failed to provide Plaintiff and the class members with all required
7 meal periods, or with compensation in lieu thereof. As a result, under Labor Code section
8 226.7, Plaintiff and the class members are entitled to one additional hour's pay at the
9 regular rate of compensation for each day a meal period was missed, late or interrupted,
10 all in an amount to be proved at trial.

11 FOURTH CAUSE OF ACTION

12 (Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

13 21. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 20.

15 22. California law requires an employer to authorize or permit an employee to
16 take a rest period of ten net minutes for every four hours worked, or major fraction
17 thereof, and such rest periods must be in the middle of the four-hour period insofar as
18 practicable. If the employer fails to provide any required rest periods, or fails to provide a
19 fully compliant rest break for a net 10 minutes wherein the employee is fully relieved of
20 all duties and all employer control, the employer must pay the employee one hour of pay
21 at the employee's regular rate of compensation for each workday the employer did not
22 provide a legally required and/or fully compliant rest period.

23 23. Defendant failed to provide Plaintiff and similarly situated and aggrieved
24 employees all required and/or fully compliant rest periods, or compensation in lieu thereof.
25 Defendant employed policies and procedures that ensured Plaintiff and other aggrieved
26 employees would not receive all legally required rest periods, maintained a non-compliant written
27 rest period policy, and Defendant did not authorize and permit all required rest periods in strict
28 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.

1 Defendant never properly advised Plaintiff and other similarly situated and aggrieved employees
2 of their right to, timing, or amount of rest breaks. Defendant further employed policies and
3 procedures ensuring that Plaintiff and similarly situated and aggrieved employees did not receive
4 premium wages to compensate them for workdays they did not receive all legally required and
5 fully compliant rest periods.

6 24. Defendant failed to provide Plaintiff and the class members with all required
7 rest periods, or with compensation in lieu thereof. As a result, under Labor Code section
8 226.7, Plaintiff and the class members are entitled to one additional hour's pay at the
9 regular rate of compensation for each day a rest break was missed, late or interrupted, all
10 in an amount to be proved at trial

11 FIFTH CAUSE OF ACTION

12 (Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

13 25. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 24.

15 26. The California Labor Code provides that, at the time of each payment of wages,
16 the employer must provide each employee with an itemized statement showing, inter alia, gross
17 wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for
18 which the employee is being paid, the employee's name and last four digits of their social security
19 number, the name and address of the legal entity that it is the employer, and all applicable hourly
20 rates in effect during the pay period and all hours worked at each rate.

21 27. For the reasons set forth above, Defendant knowingly and intentionally failed to
22 provide Plaintiff and the class members with proper, itemized wage statements. Further, the wage
23 statements issued by Defendant. Accordingly, under Labor Code Section 226, Plaintiff and the
24 class members each are entitled to penalties in the amount of \$50.00 for the initial pay period in
25 which a violation occurred, and \$100.00 for each subsequent pay period in which a violation
26 occurred, up to an aggregate penalty of \$4,000.00 per employee, plus attorney's fees and costs, all
27 in an amount to be proved at trial.

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1 SIXTH CAUSE OF ACTION

2 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

3 28. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 27.

5 29. The California Labor Code provides that, at the time of termination of
6 employment, the employer must pay an employee all wages due and owing within the time
7 frames set forth in Labor Code Sections 201, et seq. Defendant willfully failed to pay Plaintiff
8 and the class members who no longer are employed with Defendant all wages due and owing
9 within the deadlines set forth in Labor Code Sections 201, et seq.

10 30. Under Labor Code Section 203, Plaintiff and the class members who no longer are
11 employed with Defendant are entitled to recover waiting time penalties of up to 30 days' pay,
12 plus attorney's fees and costs, in an amount to be proved at trial.

13 SEVENTH CAUSE OF ACTION

14 (Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

15 31. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 30.

17 32. Defendant's failure, inter alia, to pay all wages earned and failure to pay all
18 overtime wages earned, in violation of the Labor Code and Wage Orders, constitutes an unlawful,
19 unfair or fraudulent business act or practice, in violation of Business & Professions Code Sections
20 17200, et seq.

21 33. Pursuant to Business & Professions Code Section 17203, Plaintiff and the class
22 members are entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees
23 and costs, in an amount to be proved at trial.

24 EIGHTH CAUSE OF ACTION

25 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

26 34. Plaintiff incorporates by reference the allegations contained in paragraphs 1
27 through 33.

28 35. During the period beginning one-year period preceding the filing of the initial

1 complaint in this action, Defendants violated Labor Code Sections 201-203, 204, 210, 216,
2 221-224, 226, 226.7, 450, 510, 512, 514, 1174, 1194, 1194.2, 1197, 1198, 1199, 2441,
3 2810.5, and all applicable Wage Orders. These violations subject Defendant to civil
4 penalties as set forth in the foregoing statutes as well as Labor Code Section 2699.

5 36. Plaintiff complied with the procedures for bringing suit specified in Labor Code
6 Sections 2699.3 and 2699.5. By letter dated and postmarked December 20, 2021, Plaintiff
7 gave written notice to the California Labor & Workforce Development Agency (“LWDA”) via
8 electronic submission, and via certified mail to all Defendants, of the specific provisions of
9 the Labor Code and Wage Orders allegedly violated, including the facts and theories to support
10 the alleged violations.

11 37. Under Labor Code Section 2699.3, the LWDA must give written notice by
12 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
13 date of the complainant's written notice. As of March 7, 2022, the LWDA has not provided the
14 parties any notice of its intention to investigate Plaintiff's claims on behalf of himself and
15 other aggrieved employees. As of March 7, 2022, Defendant has not responded to Plaintiff's
16 PAGA notice in an attempt to cure.

17 38. The violations alleged herein subject Defendant to civil penalties as set forth in
18 the foregoing statutes, which Plaintiff seeks on his behalf and on behalf of other aggrieved
19 employees. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly
20 violated or, for all statutes that lack a specified penalty, Plaintiff seeks default penalties as
21 provided by Labor Code Section 2699.

22 39. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
23 reasonable attorney's fees and costs in connection with his claims for civil penalties.

24 PRAYER

25 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
26 as follows:

27 1. For compensatory damages, liquidated damages, and statutory penalties according
28 to proof;

- 1 2. For an order requiring Defendant to make restitution of all amounts wrongfully
2 withheld from Plaintiff and the class;
- 3 3. For civil penalties according to proof;
- 4 4. For pre-judgment interest as permitted by law;
- 5 5. For reasonable attorney's fees and costs of suit; and
- 6 6. For such other and further relief as the Court deems just and proper.

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8 Dated: March 7, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

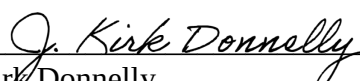
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11 J. Kirk Donnelly
12 Attorneys for Plaintiff HECTOR O. ACOSTA

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14 DEMAND FOR JURY TRIAL

15 Plaintiff hereby demands a trial by jury on all claims so triable.

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17 Dated: March 7, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

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19 
20 J. Kirk Donnelly
21 Attorneys for Plaintiff HECTOR O. ACOSTA