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Assigned for All Purposes
Judge William Claster

Attorneys for Plaintiff, ANDY RIVERA, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF ORANGE

ANDY RIVERA, as an individual and on
behalf of all similarly situated employees,

Plaintiff,

v.

THNC INDUSTRIES, INC. dba
SERVPRO LAGUNA BEACH DANA
POINT; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 30-2022-01295830-CU-OE-CXC

CLASS ACTION

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 204, 206, 510, 1194, 1194.2, 1197, 1197.1, 1182.12 (Failure to Pay All Wages);
2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Labor Code §§ 226.7 (Rest Period Violations);
4. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of Labor Code §§ 226, subd. (a), (e), 226.3, 1174, 1174.5 (Failure to Issue Accurate Itemized Wage Statements);
6. Violation of Labor Code § 2802 (Failure to Reimburse for All Necessary Business Expenditures); and
7. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).
8. Violation of the Private Attorneys General Act of 2004

DEMAND FOR JURY TRIAL

1 Plaintiff ANDY RIVERA ("Plaintiff"), as an individual and on behalf of all similarly
2 situated employees, complains and alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a class action brought on behalf of Plaintiff and the class he seeks to
5 represent ("Plaintiff Class" or "Class Members"). Plaintiff Class consists of all current and former
6 non-exempt employees of Defendant THNC INDUSTRIES, INC. doing business as SERVPRO
7 LAGUNA BEACH DANA POINT, and DOES 1 through 50, inclusive (collectively,
8 "Defendants"), in the State of California during the Class Period. The term "Class Period" is
9 defined as four (4) years prior to the filing of this complaint through judgment. Plaintiff reserves
10 the right to amend this complaint to reflect a different "Class Period" as further discovery is
11 conducted.

12 2. Plaintiff, individually and on behalf of Plaintiff Class, seeks relief against
13 Defendants, for Defendants' practices of violating the applicable Industrial Welfare Commission
14 ("IWC") Wage Orders, Code of Regulations, and Labor Codes, including: (1) failure to pay all
15 wages (including minimum, regular, and overtime); (2) failure to make available meal and rest
16 periods or provide compensation in lieu thereof; (3) failure to provide accurate itemized wage
17 statements; and (4) failure to pay all wages due upon separation of employment. These violations
18 concern current and past employees of Defendants.

19 3. At all relevant times herein, Defendants have consistently maintained and enforced
20 against Plaintiff and Plaintiff Class the unlawful practices and policies set forth herein.

21 **JURISDICTION AND VENUE**

22 4. Venue is proper in this judicial district and the County of Orange, pursuant to the
23 Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the causes of
24 action alleged herein occurred in this county.

25 5. This Court has personal jurisdiction over Defendants, because Defendants reside
26 in, are incorporated in, have their main place of business in, and/or conduct business in the State
27 of California, and a substantial portion of the acts, omissions, events, and transactions constituting
28 the causes of action alleged herein occurred within the State of California, and more specifically,

1 in the county of Orange. (Code Civ. Proc., § 410.10.)

2 6. The California Superior Court has jurisdiction over this matter because the
3 individual claims are under the seventy-five thousand dollar (\$75,000.00) individual
4 jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional
5 threshold for federal court; and upon information and belief, Plaintiff and Defendants are citizens
6 of, residents of, and/or domiciled in the State of California. Further, there is no federal question
7 at issue as the issues herein are based solely on California statutes and law, including the Labor
8 Code, IWC Wage Orders, Code of Civil Procedure, Rules of Court, and the Business &
9 Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this
10 matter.

11 **THE PARTIES**

12 **Plaintiff**

13 7. Plaintiff was employed by Defendants as a non-exempt employee from
14 approximately, August 23, 2019 until December 19, 2021, at Defendant's Orange, California
15 location. At all relevant times herein, Plaintiff was employed by Defendant in a paid hourly non-
16 exempt position. At all relevant times herein, Plaintiff was entitled to compensation for all hours
17 worked, including minimum, regular, and overtime wages, meal and rest period premiums, as
18 well as reimbursement from Defendant. Plaintiff was employed by Defendant within the four (4)
19 years prior to the commencement of this action.

20 8. Each of the Plaintiff Class consists of identifiable, current, and/or former similarly
21 situated persons who were employed by Defendant as non-exempt employees in California during
22 the Class Period.

23 **Defendants**

24 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant
25 THNC INDUSTRIES, INC. is a California corporation doing business as ServPro Laguna Beach
26 Dana Point. THNC INDUSTRIES, INC. is a company that provides restoration and cleaning
27 services to residential and commercial properties in Orange County, and was Plaintiff's employer.
28 On information and belief, and based thereon, Plaintiff alleges that Defendant is conducting

1 business in good standing in California, and at all times herein mentioned has regularly conducted
2 business throughout the State of California.

3 10. Plaintiff is ignorant of the true names, capacities, relationships and extent of
4 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
5 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
6 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
7 capacities of the DOE Defendants when that information is ascertained.

8 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
11 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
12 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
13 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
14 the conduct described in this complaint.

15 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
16 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
17 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
18 below was acting, at least in part, within the course and scope of that authority as such agent,
19 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
20 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
21 are legally attributable to the other Defendants.

22 **PAGA ADMINISTRATIVE PREREQUISITE**

23 13. Plaintiff brings this case as a representative action seeking penalties for the State
24 of California in a representative capacity, as provided by the Private Attorney General Act, Labor
25 Code section 2698 et seq. ("PAGA"), as an aggrieved employee was employed by Defendant and
26 did not receive all wages due, was not paid regular wage, was not paid overtime, was not provided
27 accurate wage statements, was not reimbursed for necessary expenditures, and was not able to
28 take lawful meal and rest breaks or receive premium compensation in lieu thereof.

14. Prior to filing this complaint, on June 28, 2022, Plaintiff gave written notice by certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on September 6, 2022, is attached hereto as Exhibit A.

15. More than sixty-five (65) days have passed since Plaintiff submitted his June 28, 2022 notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant' intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his June 28, 2022 PAGA notice.

FACTUAL ALLEGATIONS

16. Plaintiff and Plaintiff Class are, and all times relevant herein, have been non-exempt employees within the meaning of the Labor Code, and the implementing rules of the IWC Wage Orders.

17. Plaintiff is informed and believes, and based thereon alleges, that Defendants continue to employ non-exempt employees within California.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendants' policies and practices described herein are common across each of Defendants' locations within the State of California.

19. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all hours worked, including minimum, regular, and overtime wages, and that they were not receiving

1 all wages earned for work that was required to be performed. In violation of the Labor Code and
2 IWC Wage Orders, Defendant routinely required Plaintiff and Class Members to work through
3 their meal breaks and were not paid premium compensation in lieu thereof. Defendant failed to
4 include these meal premiums in their regular rate of pay when calculating their overtime rate.
5 Additionally, Plaintiff and Class Members at times worked seven (7) days in a row but were not
6 paid at double their regular rate of pay for each hour worked over eight (8) hours on the seventh
7 consecutive day.

8 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
9 or should have known that Plaintiff and Class Members were entitled to receive all required meal
10 periods or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate
11 of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the
12 Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing
13 compliant meal periods. Specifically, Defendant had a practice of failing to provide a second meal
14 period when Plaintiff and Class Members worked ten (10) hours in a workday. As a result of
15 Defendant's failure to provide a second meal period, Plaintiff and Class Members did not receive
16 all meal periods or payment of one (1) additional hour of pay at Plaintiff and Class Members'
17 regular rate of pay when they did not receive a timely, uninterrupted thirty (30) minute off-duty
18 meal period.

19 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that Plaintiff and Class Members were entitled to receive all paid rest
21 periods or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate
22 of pay when a rest period was missed, interrupted, or shortened. In violation of the Labor Code
23 and IWC Wage Orders, Defendant had a pattern, practice, and policy of not providing paid rest
24 periods. Defendant never provided Plaintiff and Class Members a third rest period when they
25 worked more than ten (10) hours in a workday. As a result of Defendant's understaffing and daily
26 work requirements and demands, Plaintiff and Class Members did not receive all paid rest periods
27 or payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate of pay
28 when a paid rest period was missed, truncated, or interrupted.

1 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and Class Members were entitled to receive itemized wage
3 statements that accurately showed their actual hours worked, total hours worked, number of hours
4 worked at each hourly rate, gross and net wages earned, and premium wages earned per pay period
5 in accordance with California law. In violation of the Labor Code, Plaintiff and Class Members
6 were not provided with accurate itemized wage statements.

7 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
8 or should have known that Plaintiff and certain Class Members were entitled to timely payment
9 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain
10 Class Members did not receive payment of all wages due, within permissible time periods, upon
11 separation of employment.

12 **CLASS ALLEGATIONS**

13 25. Plaintiff brings this action on behalf of himself and all other similarly situated
14 employees, as a class action pursuant to Code of Civil Procedure section 382.

15 26. Plaintiff's proposed class consists of and is defined as follows: all individuals who
16 worked for Defendants in a California location as non-exempt employees during the Class Period.

17 27. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend
18 or modify the class description(s) with greater specificity or further division into subclasses or
19 limitation to particular issues.

20 28. This action has been brought and may be maintained as a class action pursuant to
21 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
22 litigation and because the proposed classes are easily ascertained by Defendant's personnel and
23 payroll records.

24 **Numerosity**

25 29. The potential members of the class as defined are so numerous that joinder of all
26 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
27 Plaintiff is informed and believes that Defendants have employed more than 40 non-exempt
28 employees during the Class Period.

1 **Commonality**

2 30. There are common questions of law and fact arising out of Defendants' conduct as
3 described herein, including, but not limited to:

- 4 a. Whether Defendants failed to pay all wages, including minimum, regular,
5 and overtime wages earned and due to Plaintiff and Plaintiff Class;
6 b. Whether Defendants failed and continue to fail to provide meal periods or
7 compensation in lieu thereof to Class Members;
8 c. Whether Defendants failed and continue to fail to authorize and permit
9 Class Members to take rest periods or compensation in lieu thereof;
10 d. Whether Defendants failed to furnish to Plaintiff and Class Members wage
11 statements containing all information required by Labor Code section 226,
12 subdivision (a);
13 e. Whether Defendants failed to timely pay Plaintiff and Class Members all
14 wages due during and after their employment;
15 f. Whether Defendants failed to reimburse Plaintiff and Class Members for
16 all necessary business expenditures; and
17 g. Whether Defendants engaged in unfair/unlawful business practices.

18 **Typicality**

19 31. The claims of the Plaintiff are typical of the claims for the Plaintiff Class, all of
20 whom have incurred and/or will incur damages, as a result of Defendant's common course of
21 conduct and common policies and practices. The claims of Plaintiff are typical because Defendant
22 subjected all of its non-exempt employees to the identical violations of the IWC Wage Orders,
23 Code of Regulations, Labor Code, and Business and Professions Code, among other statutes.

24 **Adequacy of Representation**

25 32. Plaintiff will fairly and adequately represent and protect the interests of the
26 Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's
27 attorneys are competent, well-versed, and experienced in litigating employment class actions and
28 other complex litigation matters.

1 **Superiority of Class Action**

2 33. Under the facts and circumstances set forth above, a class action is superior to any
3 other method available for the fair and efficient adjudication of the rights of each class member
4 in as much as joinder of individual, relatively small claims of Class Members is not practical and
5 if each employee were required to file an individual lawsuit, the corporate defendant would
6 necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm
7 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an
8 individual remedy would also discourage the assertion of lawful claims by employees fearful of
9 retaliation and permanent damage to their careers at present and/or subsequent employment.
10 Further, the substantial risk of inconsistent or varying verdicts or adjudications with respect to the
11 individual Class Members against Defendants herein further support class certification.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES**

14 **(By Plaintiff against All Defendants)**

15 34. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
16 as if fully alleged.

17 35. Any employee receiving less than the legal minimum wage or legal overtime
18 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees
19 and costs of suit. (Lab. Code, § 1194, subd. (a).)

20 36. Labor Code section 1182.12 provides for employers who employed 26 or more
21 people from January 18, 2018 to December 31, 2018, the minimum wage rate in California was
22 eleven dollars (\$11.00) per hour. From January 1, 2019 to December 31, 2019, the minimum
23 wage rate in California is twelve dollars (\$12.00) per hour. From January 1, 2020 to December
24 31, 2020, the minimum wage rate in California is thirteen dollars (\$13.00) per hour. From January
25 1, 2021 to December 31, 2021, the minimum wage rate in California is fourteen dollars (\$14.00)
26 per hour. From January 1, 2022, the minimum wage rate in California, and specifically, in Orange
27 County, is fifteen dollars (\$15.00) per hour. Plaintiff is informed and believes Defendants
28 employed more than twenty-six (26) employees.

1 37. Notwithstanding any other provision of the Labor Code, hourly minimum wage
2 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
3 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

4 38. In any action to recover payment of wages less than the minimum wage an
5 employee shall be entitled to recover liquidated damages in an amount equal to the wages
6 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

7 39. Any work in excess of eight (8) hours in any workday and any work in excess of
8 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
9 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
10 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
11 for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess of eight (8) hours on any
12 seventh (7th) day of a workweek shall be compensated at the rate of no less than twice the regular
13 pay of an employee. (Lab. Code, § 510, subd. (a).)

14 40. All wages earned in employment are due and payable twice during each calendar
15 month on dates designated in advance by the employer. (Lab. Code, § 204.)

16 41. In case of a dispute over wages, the employer shall pay, without condition and
17 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
18 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

19 42. At all relevant times herein, Plaintiff and Class Members were and are paid as non-
20 exempt employees.

21 43. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty
22 (40) hours per week.

23 44. Plaintiff and Plaintiff Class frequently worked seven (7) days consecutively.
24 Defendant routinely required Plaintiff and Plaintiff Class to work through their meal breaks and
25 were not paid premium compensation in lieu thereof. Employer failed to include these meal
26 premiums in their regular rate of pay when calculating their overtime rate.

27 45. As a consequence, Defendant failed to pay Plaintiff and Plaintiff Class all
28 minimum, regular, overtime, and/or double-time wages for all hours worked, including hours in

1 excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections,
2 *inter alia*, 204, 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum,
3 regular, overtime, and/or double-time compensation which they earned and accrued for four (4)
4 years prior to filing this complaint, according to proof.

5 46. Additionally, Plaintiff and Plaintiff Class are entitled to liquidated damages,
6 attorneys' fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure
7 section 1021.5, and prejudgment interest.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

10 **(Lab. Code, §§ 226.7, 512)**

11 **(By Plaintiff against All Defendants)**

12 47. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
13 as if fully alleged.

14 48. Labor Code sections 226.7, 512, and the applicable IWC Wage Order provide that
15 no employer shall employ any person for a work period of more than five (5) hours without
16 providing a meal period uninterrupted by work duties of not less than thirty (30) minutes, or
17 employ any person for a work period of more than ten (10) hours without a second meal period
18 of not less than thirty (30) minutes.

19 49. Labor Code section 226.7 provides that if an employer fails to provide an
20 employee a meal period in accordance with this section, the employer shall pay the employee one
21 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
22 period is not provided in accordance with this section. Plaintiff alleges Defendant failed to provide
23 legally compliant meal periods. Specifically, Plaintiff and Class Members never received a
24 second meal period when they worked ten (10) or more hours in a workday.

25 50. At all times relevant hereto, Plaintiff and Plaintiff Class have worked shifts of
26 more than five (5) hours in a workday.

27 51. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to
28 damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed

1 meal break, in an amount to be proven at trial.

2 52. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked shifts
3 more than ten (10) hours in a workday and were regularly denied a legally compliant second meal
4 period.

5 53. Pursuant to Labor Code section 226.7, Plaintiff individually and on behalf of the
6 Plaintiff Class, request recovery of meal period compensation which they are owed beginning
7 four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties
8 against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other
9 statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law,
10 Plaintiff requests the court award reasonable attorneys' fees and costs incurred by them in this
11 action.

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

14 **(Lab. Code, § 226.7)**

15 **(By Plaintiff against All Defendants)**

16 54. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
17 as if fully alleged.

18 55. Labor Code section 226.7 and the applicable Wage Order provide that employers
19 authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time
20 per four (4) work hours, or major fraction thereof.

21 56. Labor Code section 226.7, subdivision (b), provides that if an employer fails to
22 provide and employee rest periods in accordance with this section, the employer shall pay the
23 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
24 that the rest period is not provided. Plaintiff and Plaintiff Class consistently worked over ten (10)
25 hours per shift but never received a third rest period due to Defendant's uniform policies and
26 practices.

27 57. Defendants failed to reasonably make available rest breaks to Plaintiff and Plaintiff
28 Class throughout the Class Period due to their understaffing, workload, and demands.

1 58. Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one (1)
2 hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil
3 Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award
4 reasonable attorneys' fees and costs incurred by them in this action.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

7 **(Lab. Code, §§ 201, 202, 203)**

8 **(By Plaintiff against All Defendants)**

9 59. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
10 as if fully alleged herein.

11 60. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's
12 ongoing unfair business practices, Defendant failed to pay all employees all wages earned during
13 their employment at the time of their separation in violation of Labor Code sections 201 and 202.

14 61. Labor Code section 201 provides that an employer is required to pay an employee
15 whose employment is terminated by the employer all wages earned and unpaid immediately upon
16 termination.

17 62. Labor Code section 202 requires an employer pay to an employee who quits his or
18 her employment, all wages earned and unpaid no later than seventy-two (72) hours thereafter.

19 63. Labor Code section 203 provides that an employer who fails to pay all wages
20 earned and due an employee who is discharged or who quits within the timeframe set forth in
21 sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at
22 the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer
23 owes the employee his or her daily rate of pay at their regular rate of pay for each day the full
24 amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

25 64. Plaintiff and members of the Plaintiff Class who terminated employment within
26 four (4) years of the filing of this complaint until the date of entry of judgment, without being
27 paid the proper payments as described herein are entitled to thirty (30) days of pay at their regular
28 rate of pay as waiting time penalties.

65.

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS**

3 **(Lab. Code, §§ 226, 226.3, 1174, 1174.5)**

4 **(By Plaintiff against All Defendants)**

5 66. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
6 as if fully alleged herein.

7 67. Labor Code sections 226, 226.3, 1174, and 1174.5, and applicable IWC Wage
8 Orders provide that employers must keep records and provide employees with itemized wage
9 statements showing all hours worked and each applicable rate of pay in effect during the pay
10 period with the corresponding number of hours worked at each hourly rate.

11 68. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
12 location in California or at the plant or establishment at which the employee is employed, payroll
13 records showing the hours worked daily, and the wages paid to each employee. Labor Code
14 section 226, subdivision (a), requires an employer to provide employees—either as a detachable
15 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
16 paid by personal check or cash—an accurate itemized wage statement in writing, including
17 specified information, including, but not limited to: "(1) gross wages earned; (2) total hours
18 worked . . . (5) net wages earned... and (9) all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate by the employee."

20 69. Labor Code section 226, subdivision (e), provides that if an employer knowingly
21 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned,
22 the total hours worked by the employee and the applicable hourly overtime rates, causing the
23 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
24 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
25 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
26 Defendant willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

27 70. The IWC Wage Orders require that every employer shall keep accurate
28 information with respect to each employee, including, but not limited to, time records showing

1 the total daily hours worked by each employee, the total hours worked in each payroll period, and
2 applicable rates of pay. Plaintiff is informed and believes that Defendant willfully and
3 intentionally failed to make and/or keep records which accurately reflect the hours worked by
4 Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant's records fail to
5 include, *inter alia*: (1) actual hours worked; (2) total hours worked; (3) number of hours worked
6 at each hourly rate; (4) gross wages earned; (5) net wages earned; (6) premium wages earned per
7 pay period; and (7) the entity's legal name and address.

8 71. An employee is deemed to suffer injury if the employer fails to provide an accurate
9 wage statement containing all of the required information set forth in Labor Code section 226,
10 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked, proper
11 rates of pay, records of missed meal and rest breaks, and/or premium pay make it difficult for
12 employees to determine whether they were paid all wages due without complicated calculations
13 and/or reconstruction of records required to be maintained by the employer.

14 72. For each employee suffering an injury as a result of Defendants' knowing and
15 intentional failure to provide an accurate, itemized wage statement, the employee is entitled to
16 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
17 a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a
18 subsequent pay period.

19 73. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
20 failure to keep accurate payroll records, as described above, violated Labor Code section 1174,
21 subdivision (d), and section 226, subdivision (a), and the applicable Wage Order. Plaintiff intends
22 on seeking penalties under Labor Code section 2699, subdivision (f)(2), Plaintiff and the Plaintiff
23 Class are entitled to penalties of one hundred dollars (\$100.00) for the initial violation, and two
24 hundred dollars (\$200.00) for each subsequent violation, for every pay period during which these
25 records and information were not kept by Defendants.

26 74. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
27 failure to keep and maintain accurate records and information and provide to Plaintiff and Class
28 Members accurate itemized wage statements, as described above, was knowing and intentional,

1 and Plaintiff and Plaintiff Class are entitled to statutory penalties for each pay period in which a
2 violation occurred. Plaintiff further seeks recovery of attorneys' fees and costs pursuant to Labor
3 Code section 226, subdivision (e), and as otherwise permitted by law.

4 **SEVENTH CAUSE OF ACTION**

5 **UNFAIR/UNLAWFUL BUSINESS PRACTICES**

6 **(Bus. & Prof. Code, §§ 17200 et seq.)**

7 **(By Plaintiff against All Defendants)**

8 75. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
9 as if fully alleged herein.

10 76. Plaintiff brings this claim individually and on behalf of Class Members.

11 77. Business and Professions Code section 17200 ("UCL") prohibits unfair
12 competition in the form of any unlawful, unfair, or fraudulent business act or practice.

13 78. Business and Professions Code section 17204 allows "any person who has suffered
14 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
15 a civil action for violation of the UCL.

16 79. Labor Code section 90.5, subdivision (a), states it is the public policy of California
17 to vigorously enforce minimum labor standards in order to ensure employees are not required to
18 work under substandard and unlawful conditions, and to protect employers who comply with the
19 law from those who attempt to gain competitive advantage at the expense of their workers by
20 failing to comply with minimum labor standards.

21 80. Beginning at an exact date unknown to Plaintiff, but at least since the date four
22 years prior to the filing of this complaint, Defendants have committed acts of unfair competition
23 as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and
24 fraudulent business practices and acts described in this complaint, including, but not limited to,
25 violations of Labor Code sections 201, 202, 203, 204, 206, 226, 226.3, 226.7, 510, 512, 1174,
26 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as other statutes.

27 81. The violations of these laws and regulations, as well as of fundamental California
28 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of

1 Business and Professions Code sections 17200 et seq.

2 82. As a result of these actions, Plaintiff, on information and belief, alleges that
3 Defendants are able to unfairly compete with other comparable companies in the State of
4 California in violation of Business and Professions Code sections 17000 et seq. and sections
5 17200 et seq. Due to these unlawful, unfair, and/or fraudulent business practices, Defendants have
6 gained a competitive advantage over other comparable companies doing business in the State of
7 California.

8 83. The victims of these unlawful, unfair, and/or fraudulent business practices include,
9 but are not limited to, Plaintiff, putative class members, competing maintenance companies in the
10 State of California, and the general public. Plaintiff is informed and believes, and thereon alleges,
11 that Defendant performed the above-mentioned acts with the intent of gaining an unfair
12 competitive advantage and thereby injuring Plaintiff, putative class members, other competitors,
13 and the general public.

14 84. Plaintiff's success in this action will enforce important rights affecting the public
15 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
16 of himself.

17 85. Business and Professions Code sections 17203 provides that a court may make
18 such orders or judgments as may be necessary to prevent the use or employment by any person
19 of any practice which constitutes unfair competition. Injunctive relief is necessary and appropriate
20 to prevent Defendants from repeating their unlawful, unfair, and fraudulent business acts and
21 business practices alleged above.

22 86. Business and Professions Code section 17203 provides that the Court may restore
23 to any person in interest any money or property that may have been acquired by means of such
24 unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business
25 and Professions Code section 17203 for wages and payments unlawfully withheld from
26 employees, including the fair value of the meal and rest periods and other losses alleged herein,
27 during the four-year period prior to the filing of this complaint. All remedies are cumulative
28 pursuant to Business and Professions Code section 17205.

1 87. Business and Professions Code section 17202 provides: “Notwithstanding section
2 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
3 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled
4 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
5 Professions Code section 17202.

6 88. Plaintiff requests injunctive relief pursuant to Business and Professions Code
7 section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged
8 herein.

9 89. Plaintiff herein takes upon enforcement of these laws and lawful claims. There is
10 a financial burden involved in pursuing this action. The action is seeking to vindicate a public
11 right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff to
12 pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant to
13 Code of Civil Procedure section 1021.5 and others.

14 **EIGHTH CAUSE OF ACTION**

15 **(Civil Penalties, Under the Private Attorneys General Act)**

16 **(Plaintiff against all Defendants)**

17 90. Plaintiff re-alleges and incorporates by reference the preceding paragraphs of this
18 Complaint as if fully alleged herein.

19 91. California Labor Code §§2699, in relevant part, provides, “any provision of this
20 code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
21 Development Agency...for a violation of this code, may, as an alternative, be recovered through a
22 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
23 former employees pursuant to the procedures specified in Section 2699.3.”

24 92. On June 28, 2022, Plaintiff sent out a notice to the Labor and Workforce
25 Development Agency (LWDA), as well as to Defendant (Attached as “Exhibit A”). The Notice
26 outlined the Labor Code sections DRG was alleged to have violated. Plaintiff has not received a
27 response from the LWDA. 65 days have passed from the postmark date of the Notice. Plaintiff
28 brings this cause of action, as a representative of the state and on behalf of himself and other

aggrieved employees, against Defendant.

93. Defendant violated Labor Code § 1194 and 510 by failing to pay Mr. Rivera and aggrieved employees for all hours worked, including applicable overtime rates, as detailed above.. Defendant violated Labor Code §§ 226.7 and 512 by failing to provide meal and rest periods to Plaintiff and other employees. Defendant had a pattern and practice of failing to provide second meal and rest periods when Plaintiff and aggrieved employees worked more than ten (10) hours in a given work day. Defendant violated Labor Code §§ 201-203 by failing to pay Plaintiff and other employees all wages earned at the time they quit or were discharged, then failing to pay penalties for each day after employment termination that it did not pay these employees all wages they had earned. Defendant violated Labor Code § 226 by failing to account, on wage statements it provided Plaintiff and other employees, for all hours Plaintiff and other employees worked, gross wages earned, and net wages earned. Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and aggrieved employees for all necessary business expenditures, specifically the use of their personal cellular devices for work purposes. Defendant also violated Labor Code § 1174 by failing to keep accurate payroll records.

94. Plaintiff seeks penalties under Labor Code §§ 2698 et seq. for the Labor Code violations DRG committed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure section 382;
2. The Court appoint Plaintiff as Class Representative;
3. The Court appoint Mahoney Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful/unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and civil penalties according to proof;

1 8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226,
2 subdivision (e), and section 1194; Code of Civil Procedure section 1021.5, and/or other applicable
3 laws statutes; and

4 9. That the Court award such other and further relief as this Court may deem
5 appropriate.

6
7 Dated: December 8, 2022

MAHONEY LAW GROUP, APC

8
9
10 By:



Kevin Mahoney, Esq.
Berkeh Alemzadeh, Esq.
Raleigh Dixon, Esq.
Attorney for Plaintiff ANDY RIVERA, as
an individual and on behalf of all similarly
situated employees

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EXHIBIT A



Raleigh Dixon, Esq.
562.590.5550 phone
562.590.8400 facsimile
rdixon@mahoney-law.net

June 28, 2022

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL # 7021 0950 0001 6447 5469

Return Receipt Requested

Tayler Michael Carano – Managing Member and Agent for Service of Process
Thnc Industries, Inc. dba ServPro of Laguna Beach Dana Point
1302 E. Hunter Avenue
Santa Ana, CA 92705

Re: Andy Rivera v. Thnc Industries, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Thnc Industries, Inc. dba ServPro Laguna Beach Dana Point (“Employer”)

From: Andy Rivera, on behalf of himself and all aggrieved employees who were subject to the employer’s wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Andy Rivera (“Mr. Rivera”), who intend to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Thnc Industries, Inc. dba ServPro Laguna Beach (referred to herein as “Employer”) is a California Company conducting business in Orange County, California, and was the employer of Mr. Rivera. Employer is a company that provides restoration and cleaning services to residential and commercial properties.

Mr. Rivera is a former employee of Employer and worked for Employer as a Crew Chief Helper from on or around August 23, 2019 until December 19, 2021.

Mr. Rivera alleges that Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7 510, 512, 1194, and 2802 by:

- a) Failing to pay Mr. Rivera and aggrieved employees for all hours worked;
- b) failing to provide Mr. Rivera and aggrieved employees with compliant rest periods or premium compensation in lieu thereof;
- c) failing to provide Mr. Rivera and aggrieved employees with compliant meal periods or premium compensation in lieu thereof;
- d) failing to provide Mr. Rivera and aggrieved employees with accurate itemized wage statements;
- e) failing to pay Mr. Rivera and aggrieved employees all wages earned and owed at separation of employment; and
- f) failing to reimburse Mr. Rivera and aggrieved employees for all necessary business expenditures.

Mr. Rivera and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of this notice alleging the aforementioned violations of the Labor Code under PAGA.

A. Employer failed to pay Mr. Rivera and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to 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.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee... 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 pay of an employee.”

Employer failed to compensate Mr. Rivera and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Mr. Rivera and aggrieved employees were routinely required to work through their meal breaks and were not paid premium compensation in lieu thereof. Employer failed to include these meal premiums in their regular rate of pay when calculating their overtime rate. Additionally, Mr. Rivera and aggrieved employees at times worked seven (7) days in a row but were not paid at double their regular rate of pay for each hour worked over eight (8) hours on the seventh consecutive day.

Employer's failure to pay Mr. Rivera and aggrieved employees for all hours worked, including applicable overtime rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Rivera and aggrieved employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that Employer permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Employer failed to provide compliant rest periods or premium compensation in lieu thereof. Specifically, when Mr. Rivera and aggrieved employees worked more than ten (10) hours in a workday, they never received the requisite third rest period. As a result of Employer's policy and practices, Mr. Rivera and aggrieved employees did not receive timely rest periods and were not compensated with premium wages for non-compliant meal periods. Employer's conduct is in violation of Labor Code Sections 226.7 and 512, is also actionable under PAGA.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7.

C. Employer failed to provide Mr. Rivera and aggrieved employees with meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Employer failed to provide Mr. Rivera and aggrieved employees with timely uninterrupted meal periods. Specifically, Employer had a practice of failing to provide a second meal period when Mr. Rivera and aggrieved employees when they worked ten (10) hours in a workday. As a result of Employer's policy and practices, Mr. Rivera and aggrieved employees did not receive timely uninterrupted meal periods and were not compensated with premium wages for non-compliant meal periods. Employer's conduct is in violation of Labor Code Sections 226.7 and 512, is also actionable under PAGA.

D. Employer failed to provide Mr. Rivera and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires Employer to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the

name and address of the legal entity that is the employer. Labor Code section 1174 further requires Employer to keep accurate payroll records that include “the hours worked daily” by employees.

By failing to pay Mr. Rivera and aggrieved employees for all hours worked, including the applicable overtime rates and meal and rest period premiums, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate corresponding number of hours worked at each hourly rate which resulted in inaccurate gross and net wages.

Employer’s conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to pay Mr. Rivera and aggrieved employees all wages earned and owed upon separation of employment

Pursuant to Labor Code section 201, subdivision (a), “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202, subdivision (a) provides, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

At the time that Mr. Rivera and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned, including unpaid overtime and meal and rest period premiums, and owed at the applicable rate.

Labor Code section 203, subdivision (a), states that “[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Accordingly, Mr. Rivera and aggrieved employees are entitled to thirty days of waiting time penalties.

F. Employer failed to reimburse Mr. Rivera and aggrieved employees for all necessary business expenditures.

Pursuant to Labor Code section 2802, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Mr. Rivera and aggrieved employees were required to use their personal cell phone to log their hours, as well as to call and text coworkers. Employer failed or refused to reimburse Mr. Portillo and aggrieved employees for the use of their personal cellular devices or the Wi-Fi connection necessary to listen in to conversations.

Employer's failure to reimburse Mr. Rivera and aggrieved employees for all necessary business expenditures, specifically the use of their personal cellular devices for work purposes, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Rivera becomes aware of additional compensation owed or losses incurred by Mr. Rivera or by any other aggrieved employee of the Employers, Mr. Rivera expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Raleigh Dixon, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: rdixon@mahoney-law.net

Sincerely,

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

Raleigh Dixon, Esq.
MAHONEY LAW GROUP, APC