

1 David P. Myers (SBN 206137)
2 dmyers@myerslawgroup.com
3 Jason Hatcher (SBN 285481)
4 jhatcher@myerslawgroup.com
5 **THE MYERS LAW GROUP, A.P.C.**
6 9327 Fairway View Place, Suite 100
7 Rancho Cucamonga, CA 91730
8 Telephone: (909) 919-2027
9 Facsimile: (888) 375-2102

10 Attorneys for Plaintiff LUIS SEDANO,
11 and all others similarly situated.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SAN BERNARDINO**

14 LUIS SEDANO, on behalf of himself and all
15 others similarly situated

16 **PLAINTIFF,**

17 **v.**

18 NEW-INDY ONTARIO LLC, a Delaware
19 Limited Liability Company; NEW-INDY
20 OXNARD LLC, a Delaware Limited
21 Liability Company; NEW-INDY
22 CONTAINERBOARD LLC, a Delaware
23 Limited Liability Company; NEW-INDY
24 CONTAINERBOARD HOLD CO LLC, a
25 Delaware Limited Liability Company; and
26 DOES 1 through 100, inclusive

27 **DEFENDANTS.**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEC 21 2022

By

Rina Phillips
Rina Phillips Deputy

Case No.: CIVSB2216238

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. **Failure to Pay All Overtime and Double Time Wages**
2. **Failure to Provide Meal Periods**
3. **Failure to Provide Rest Periods**
4. **Failure to Provide Accurate Wage Statements**
5. **Unfair Competition**
6. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

1 Plaintiff LUIS SEDANO, on behalf of himself, and all others similarly situated and the
2 general public (hereinafter referred to as “Plaintiff”), hereby files this proposed class action
3 Complaint against Defendants NEW-INDY ONTARIO LLC, a Delaware Limited Liability
4 Company; NEW-INDY OXNARD LLC, a Delaware Limited Liability Company; NEW-INDY
5 CONTAINERBOARD LLC, a Delaware Limited Liability Company; NEW-INDY
6 CONTAINERBOARD HOLD CO LLC, a Delaware Limited Liability Company; and DOES 1
7 through 100 (hereinafter collectively referred to as “Defendants”). Plaintiff is informed and
8 believes, and on the basis of that information and belief, alleges as follows:

9 I. INTRODUCTION

10 1. This is a civil class action brought on behalf of Plaintiff and all other individuals
11 who worked for Defendants in California as hourly non-exempt production employees at any time
12 from four years preceding the filing of this action, and continuing until class certification (“Class
13 Period”), who Defendants failed to pay all overtime and/or double time wages, failed to provide
14 meal breaks or meal period premium pay at the correct regular rate of pay in lieu thereof, failed to
15 provide rest breaks or rest period premium pay at the correct regular rate of pay in lieu thereof,
16 failed to provide accurate wage statements and for violating the California Unfair Competition
17 Law.

18 2. Plaintiff seeks, among other things, all wages, restitutionary disgorgement, and
19 statutory penalties. Plaintiff seeks to represent the following Class:

20 All current and former California hourly non-exempt production employees of
21 Defendants who provided production services for Defendants at any time from four
22 years prior to the filing of the original complaint to the date of class certification.
23 (The “Class”).

24 3. This civil action seeks recovery of unpaid wages, waiting time penalties, and
25 statutory penalties for Defendants’ violations of California Labor Code (“Labor Code”) §§ 218,
26 218.5, 226, 226.7, 510, 512, 1194, and the applicable Wage Order(s) issued by the California
27 Industrial Welfare Commission (hereinafter, the “IWC Wage Order(s)"). The Plaintiff for himself,
28 and on behalf of the general public, and all others similarly situated, brings an action for monetary
damages for failure to pay wages, declaratory relief and restitution for Defendants’ violations of
California Business and Professions Code (“B&PC”) §17200, *et seq.*, including full restitution of
all compensation retained by Defendants, as a result of its unlawful, fraudulent, and unfair business

practices. Further, Plaintiff seeks injunctive relief under B&PC §17200, *et seq.*

4. The term “Plaintiff” refers to Luis Sedano, who is the named Plaintiff and putative class representative.

5. Plaintiff seeks all available relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits retained by Defendants, in addition to injunctive relief, as a result of Defendants unlawful and unfair business practices. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from four (4) years preceding the filing of this complaint up to and through the date class certification for this matter is ordered (hereinafter, the “Relevant Time Period”).

II. JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court because it is a civil action where the amount in controversy, exclusive of interests and costs, exceeds the jurisdictional minimum of the Court. The acts and omissions complained of in this action took place in the State of California, and all Defendants have subjected themselves to the State of California.

7. The California Superior Court has jurisdiction in this matter due to Defendants’ violations of California Labor Code §1194, *et seq.*; Labor Code §§226, 226.7, and 226.8; Labor Code §500, *et seq.*; B&PC §17200, *et seq.*; the applicable IWC Wage Order(s) and related common law principles.

8. The San Bernardino Superior Court is the proper venue for this action pursuant to CCP §395(a) and §395.5 as, at all relevant times, Defendants conducted business and engaged in acts and omissions which are subject matter of this Complaint in the County San Bernardino. Defendants maintain a business location in Ontario, California, and Plaintiff and the other class members transacted Defendants’ business within the County of San Bernardino and throughout the State of California.

III. PARTIES

9. Plaintiff LUIS SEDANO (hereafter “Plaintiff”) is now and/or at all times mentioned in this Complaint was a resident of the State of California and the County of San Bernardino. Plaintiff worked for Defendants as a non-exempt hourly employee in the state of

1 California.

2 10. Plaintiff seeks for himself, and the entirety of the class, seeks all unpaid overtime
3 wages, and double time wages owed due to Defendants' failure to pay all overtime and/or double
4 time wages at the correct regular rate of pay, pursuant to Labor Code §§510, 1194, 1194.2, and the
5 applicable Industrial Welfare Commission ("IWC") Wage Order.

6 11. Plaintiff seeks for himself, and the entirety of the class, all unpaid meal period
7 premium pay for each day Defendants failed to provide a compliant meal period(s) at the regular
8 rate of pay/compensation, pursuant to Labor Code §§512, 226.7 and the applicable Industrial
9 Welfare Commission ("IWC") Wage Order.

10 12. Plaintiff seeks for himself, and the entirety of the class, all unpaid rest period
11 premium pay for each day Defendants failed to provide a compliant rest period(s) at the regular
12 rate of pay/compensation, pursuant to Labor Code §§512, 226.7 and the applicable Industrial
13 Welfare Commission ("IWC") Wage Order.

14 13. Plaintiff seeks for himself, and the entirety of the class, for violations of Labor Code
15 §226(a) in providing inaccurate wage statements, the greater of actual damages or penalties from
16 Defendants pursuant to Labor Code §226(e).

17 14. Defendant NEW-INDY ONTARIO LLC ("New-Indy Ontario") is now and/or at
18 all times mentioned in this Complaint a Delaware Limited Liability Company, licensed to do
19 business and actually doing business in the State of California.

20 15. Defendant New-Indy Ontario is and has been an "employer" of Plaintiff and the
21 class under the meaning of the California Labor Code, common law, and the applicable IWC Wage
22 Orders at all relevant times.

23 16. Defendant NEW-INDY OXNARD LLC ("New-Indy Oxnard") is now and/or at all
24 times mentioned in this Complaint a Delaware Limited Liability Company, licensed to do business
25 and actually doing business in the State of California.

26 17. Defendant New-Indy Oxnard is and has been an "employer" of Plaintiff and the
27 class under the meaning of the California Labor Code, common law, and the applicable IWC Wage
28 Orders at all relevant times.

1 18. Defendant NEW-INDY CONTAINERBOARD LLC (“New-Indy CB”) is now
2 and/or at all times mentioned in this Complaint a Delaware Limited Liability Company, licensed
3 to do business and actually doing business in the State of California.

4 19. Defendant New-Indy CB is and has been an “employer” of Plaintiff and the class
5 under the meaning of the California Labor Code, common law, and the applicable IWC Wage
6 Orders at all relevant times.

7 20. Defendant NEW-INDY CONTAINERBOARD HOLD CO LLC (“New-Indy CB
8 Hold”) is now and/or at all times mentioned in this Complaint a Delaware Limited Liability
9 Company, licensed to do business and actually doing business in the State of California.

10 21. Defendant New-Indy CB Hold is and has been an “employer” of Plaintiff and the
11 class under the meaning of the California Labor Code, common law, and the applicable IWC Wage
12 Orders at all relevant times.

13 22. Plaintiff does not know the true names and capacities of Defendants sued herein as
14 “DOES 1-100, inclusive,” and therefore sues these Defendants by such fictitious names.
15 Defendants, including each fictitiously named DOE Defendant, owned, controlled, or managed the
16 business for which Plaintiff worked and/or who directly or indirectly exercised operational control
17 over the wages, hours, and working conditions of Plaintiff and the Class members. Defendants,
18 including DOES 1-100, held ownership, officer, director and/or executive positions with the
19 remaining Defendants, and acted on behalf of the remaining Defendants, which included decision-
20 making responsibility for, and establishment of, illegal wage and hour practices, payroll practices,
21 and policies for Defendants which have damaged Plaintiff and the Class members. Therefore,
22 Defendants and DOES 1-100, are “employers” as a matter of law and personally liable on the
23 causes of action alleged herein. Plaintiff will seek leave of the court to amend this complaint to
24 allege such names and capacities as soon as they are ascertained.

25 23. Plaintiff is informed and believes and thereon alleges that all Defendants, including
26 the fictitious DOE Defendants, were at all relevant times acting as actual agents, conspirators,
27 ostensible agents, partners and/or joint ventures of all other Defendants. The actions of Defendants,
28 their officers, managers, supervisors, agents, and other employees of Defendants against Plaintiff

1 and all others similarly situated were ratified by Defendants.

2 24. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
3 and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting
4 as agents and/or employees, and/or under the direction and control of the each of the other
5 Defendants, and that said acts and failures to act were within the course and scope of said agency,
6 employment, and/or direction and control. Plaintiff is informed and believes, and thereon alleges,
7 that at all times material hereto Defendants were and are the agents of each other.

8 25. Plaintiff further alleges that all respective Defendants complained of herein are in
9 some manner vicariously, statutorily or otherwise liable for the acts and/or omissions of the other
10 Defendants likewise complained of herein, jointly and severally, whether by virtue of a statutory,
11 office, director, agency, managing agency, employment, joint employer, indirect employer, co-
12 conspirator, aider or abettor, partnership, alter ego, association and/or joint venture relationship,
13 affiliation or otherwise, each acting within the course and scope of such relationship(s) with actual
14 and/or apparent authority to do so, directing, controlling, ratifying, or otherwise furthering the
15 actions and/or omissions herein complained of.

16 26. At all relevant times alleged herein, Plaintiff and the Class were employed by
17 Defendants in the State of California.

18 27. Defendants personally profited by keeping wages that were owed to Plaintiff and
19 the Class under California's wage and hour laws, and Defendants obtained an unfair competitive
20 advantage over law-abiding businesses by not paying Plaintiff and the Class according to the legal
21 minimum standards.

22 28. All allegations in this complaint, except as to the facts relating to Plaintiff that are
23 based upon their knowledge, are based upon information and belief, and are likely to have
24 evidentiary support after a reasonable opportunity for further investigation and/or discovery.
25 Whenever allegations in this complaint are contrary or inconsistent, such allegations are made in
26 the alternative.

27 ///

28 **IV. COMMON FACTUAL AND CLASS ALLEGATIONS**

1 29. Plaintiff brings this lawsuit on behalf of himself and the proposed Class, which is
2 made up of all California persons who are current and former hourly, non-exempt, production
3 employees of Defendants from four (4) years preceding the filing of this action to the present.
4 Plaintiff and the Class members seek, without limitation, damages, unpaid wages, restitution,
5 injunctive relief, declaratory relief, penalties, liquidated damages, interest, costs, and attorneys'
6 fees to remedy Defendants' violations of wage and hour laws and unfair business practices in the
7 manufacturing and supplying of recycled containerboard-related goods.

8 30. Throughout the Class Period, Plaintiff and all class members were and are
9 employees of Defendants, entitled to all of the protections afforded to employees under the Labor
10 Code and applicable IWC Wage Orders.

11 31. Defendants' primary business is the manufacturing and supplying of recycled
12 containerboard-related goods throughout the state of California and nationwide.

13 32. Throughout the Class Period, Defendants knowingly and willfully engaged and
14 continue to engage in an unlawful scheme to avoid complying with California wage and hour laws
15 and other state employee rights and benefits. While employed by Defendants as hourly non-exempt
16 production employees, Plaintiff and the Class members routinely worked in excess of eight (8)
17 hours per day and/or forty (40) hours per week. While employed by Defendants as hourly non-
18 exempt production employees, Plaintiff and the Class members at times worked in excess of twelve
19 (12) hours per day.

20 33. Throughout the Class Period, Plaintiff and Class members worked in excess of eight
21 (8) hours per work-day or forty (40) hours per work week. Defendants failed to pay current and
22 former non-exempt hourly employees one-and-one-half times their regular rate of pay for all hours
23 worked in excess of eight (8) hours per day or forty (40) hours per workweek.

24 34. Throughout the Class Period, Plaintiff and Class members worked in excess of
25 twelve (12) hours per work-day. Defendants failed to pay current and former non-exempt hourly
26 employees no less than two (2) times their regular rate of pay for all hours worked in excess of
27 twelve (12) hours per day.

28 35. Throughout the Class Period, Defendants failed to authorize and permit compliant

1 meal periods. Plaintiff and Class members were assigned to and required to work shifts lasting
2 over five (5) hours, and were not provided nor allowed to take a timely thirty (30) minute
3 uninterrupted off-duty meal break prior to the fifth hour of work. Plaintiff and Class members were
4 at times worked in excess of ten (10) hours, due to Defendants' assigned shifts and workload,
5 without a second timely uninterrupted off-duty thirty (30) minute meal break at the direction of
6 Defendants without exemption.

7 36. Throughout the Class Period, Defendants failed and continue to fail to pay for meal
8 period violations at the correct regular rate of pay.

9 37. Throughout the Class Period, Defendants failed to authorize and provide paid rest
10 periods compliant with the provisions of the California Labor Code and applicable Wage Order.
11 Plaintiff and Class members were assigned to and required to work shifts lasting over four (4)
12 hours and were not provided nor allowed to take a non-duty free paid ten-minute uninterrupted
13 rest break during each four (4) hour work period, or major fraction thereof, at the direction of
14 Defendants and/or with Defendants knowledge and acquiescence.

15 38. Throughout the Class Period, Defendants failed and continue to fail to pay for rest
16 period violations at the correct regular rate of pay.

17 39. Throughout the Class Period, Defendants willfully failed to provide accurate wage
18 statements to Plaintiff and the class that included, but was not limited to, showing gross wages
19 earned, total hours worked by the employee, net wages earned, and all applicable hourly rates in
20 effect during the pay period and corresponding number of hours worked at each hourly rate by the
21 employee, and meal and/or rest period premium payments.

22 40. The underpayment of wages to the Plaintiff and the Class is a consequence of
23 Defendants' unlawful policies and practices which were centrally devised, implemented,
24 communicated, and applied to Plaintiff and all Class members.

25 41. Because of Defendants' unlawful conduct, Plaintiff and Class members have been
26 and continue to be systematically deprived of earned wages to which they are entitled by law and
27 equity, and deprived of other benefits provided by the Labor Code and applicable IWC Wage
28 Orders, to the detriment of himself, their families, and the public at large.

1 **Class Action Allegations**

2 42. Plaintiff brings this action on his own behalf and on behalf of the proposed Class,
3 pursuant to California Code of Civil Procedure §382.

4 43. Further, this action is brought for the benefit of the public, who are entitled to
5 restitution of those funds improperly withheld by Defendants.

6 44. The Classes which Plaintiff seeks to represent are composed of and defined as
7 follows:

8 All current and former California hourly non-exempt production employees of
9 Defendants for the period from four (4) years preceding the filing of the initial
10 complaint through the date of class certification who provided production services
for Defendants. (The "Class").

11 **Sub-Class 1**

12 All current and former California hourly non-exempt production employees of
13 Defendants who provided production services for Defendants and who worked at
14 least one (1) shift of eight (8) hours or more in a day or over forty (40) hours in a
workweek, or at least one (1) shift over twelve (12) hours in a workday, from four
(4) years preceding the filing of the initial complaint through the date of class
certification. ("Regular Rate Class").

15 **Sub-Class 2**

16 All current and former California hourly non-exempt production employees of
17 Defendants who provided production services for Defendants and who worked at
18 least one (1) day of more than six (6) hours from four (4) years preceding the filing
of the initial complaint through the date of class certification. ("Meal Period
Class").

19 **Sub-Class 3**

20 All current and former California hourly non-exempt production employees of
21 Defendants who provided production services for Defendants and who worked at
22 least one (1) shift of 3.5 hours or more from four (4) years preceding the filing of
the initial complaint through the date of class certification. ("Rest Period Class").

23 **Sub-Class 4**

24 All current and former California hourly non-exempt production employees of
25 Defendants who provided warehouse manufacturing services for Defendants from
26 three (3) years preceding the filing of the initial complaint through the date of class
certification, who were provided a wage statement by Defendants and are members
of Sub-Class 1, 2, or 3. ("Wage Statement Class").

27 Plaintiff reserves the right to amend or otherwise alter the class definition presented to the
28 Court at the appropriate times, or to propose or eliminate sub-classes, in response to facts learned

1 through discovery, or otherwise.

2 45. This action has been brought and may be properly maintained as a class action
3 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

4 46. **Numerosity:** Plaintiff is informed and believes and on that basis alleges that the
5 proposed Classes consist of over 75 people who are currently and formerly employed by
6 Defendants in California as hourly non-exempt production employees during the relevant time
7 period. It is possible to ascertain the number of former and current employees who are members
8 of the proposed class, but they are so numerous that joinder is impracticable. The proposed Class
9 includes future employees (persons who are hired by defendant within the class period, but who
10 are not now class members as current or former employees) whose joinder is currently impossible.
11 The precise number of Class members and their addresses can be determined by Defendants'
12 business records and will become known to Plaintiff through discovery. Class members may be
13 notified of the pendency of this action by mail, e-mail, the internet, or published and posted notice.

14 47. **Typicality:** Plaintiff's claims are typical of the claims of members of the proposed
15 classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has been subjected
16 to Defendants' unlawful employment practices, as alleged in this Complaint.

17 48. **Adequacy of Class Representative:** Plaintiff will fairly and adequately protect the
18 interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
19 Plaintiff has retained competent and experienced counsel. The interests of Class members will be
20 fairly and adequately protected by Plaintiff and his counsel.

21 49. **Common Questions of Law and Fact:** Common questions of law and fact exist
22 as to all Class members and predominate over any questions affecting solely individual members
23 of the proposed Class:

- 24 a. Whether Defendants improperly retained, appropriated or deprived Plaintiff
25 and members of the proposed Plaintiff class of the use of monies or sums to
26 which they were legally entitled;
- 27 b. Whether Defendants engaged in a pattern or practice of failing to pay
28 Plaintiff and the members of the Class the full amount of overtime and/or

double time wages, based on the regular rate of pay, for each hour in excess of eight (8) per day, or forty (40) per week, and/or over twelve (12) hours in a workday, in violation of the applicable Labor Code provisions including §§510 and 1194;

c. Whether Defendants engaged in unlawful, unfair, and/or fraudulent business practices;

d. Whether Defendants, and each of them, was/were participants in the alleged unlawful conduct;

e. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class meal periods in violation of IWC Wage Order No. 1-2001 and Labor Code §§ 226.7, 512 by failing to timely provide 30-minute uninterrupted meal periods to Plaintiff and Class members;

f. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class meal periods in violation of IWC Wage Order No. 1-2001 and Labor Code §§ 226.7, 512 by failing to timely provide the required number of 30-minute uninterrupted meal periods to Plaintiff and Class members;

g. Whether Defendants engaged in a pattern or practice of failing to pay meal period premium payments at the correct regular rate of pay to Plaintiff and Class members;

h. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class legally compliant rest periods in violation of the applicable Wage Order and Labor Code §§226.7, 512 by failing to provide legally compliant rest periods

i. Whether Defendants engaged in a pattern or practice of failing to pay rest period premium payments at the correct regular rate of pay to Plaintiff and Class members;

- j. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 *et seq.* by failing to compensate Plaintiff and the members of the Class their full amount of overtime, and/or double time wages;
- k. Whether Defendants failed to provide accurate wage statements to Plaintiff and members of the Class; and
- l. The nature and extent of class-wide injury and measure of damages for the injury.

50. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented an illegal scheme that is generally applicable to the members of the proposed plaintiff classes. Damages suffered by each Class member may be relatively small given the burden and expense of individual prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if Class members could afford such individual litigation, the court system could not. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

51. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Plaintiff is informed and believes, and on that basis alleges, that the amount of money due each Class member as economic damages is ascertainable from Defendants' records, or may readily be determined by other means.

52. The Classes should also be certified because:

- a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members, which would establish incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class members creates

1 the risk of adjudication with respect to them, which would, as a practical
2 matter, be dispositive of the interests of the other Class members not parties
3 to the adjudications, or would substantially impair or impede their ability to
4 protect their interests; and

5 c. Defendants have acted or have refused to act on grounds generally
6 applicable to the class and/or the general public, thereby making final and
7 injunctive relief, as well as declaratory relief, with respect to the Class as a
8 whole, appropriate.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY ALL OVERTIME AND DOUBLE TIME WAGES**

11 **In Violation of Labor Code §§510, 1194 & Wage Order.**

12 53. Plaintiff realleges and incorporates by reference Paragraphs 1 through 52 above as
13 though fully set forth herein.

14 54. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
15 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
16 workweek and the first eight hours worked on the seventh day of work in any one workweek shall
17 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
18 employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less
19 than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours
20 on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular
21 rate of pay of an employee. Nothing in this section requires an employer to combine more than
22 one rate of overtime compensation in order to calculate the amount to be paid to an employee for
23 any hour of overtime work.” The California overtime requirement and wage requirement are non-
24 waivable rights pursuant to LC §219.

25 55. The Wage Orders mandates that employers pay one and one-half times the
26 employees’ regular rate of pay for employees who work more than eight hours in a day or forty
27 hours in a week and two times their regular rate of pay for any work in excess of twelve hours in
28 one day.

1 56. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
2 wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
4 of the full amount of this minimum wage or overtime compensation, including interest thereon,
5 reasonable attorney’s fees, and costs of suit.”

6 57. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
7 overtime and/or double time wages directly against the employer without first filing a claim with
8 the Division of Labor Standards Enforcement (“DLSE”) and may recover such wages, together
9 with interest thereon, penalties, attorneys’ fees and costs. Further, pursuant to Labor Code §1198,
10 it is unlawful to employ person for longer than the hours set by the IWC or under conditions
11 prohibited by the applicable IWC Wage Orders. Wage Order 1, as amended, applies to Plaintiff.

12 58. However, Defendants have failed and refused to pay Plaintiff and the class
13 members overtime and/or double time compensation for all overtime and double time hours
14 worked in excess of eight (8) hours per day and forty (40) hours per week, or twelve (12) hours
15 per day, as required by LC §§510, 1194 and the applicable Wage Orders. Plaintiff is informed and
16 believes and based thereon alleges that the obligations and responsibilities of the class employees
17 are irrelevant because Plaintiff and all other similarly situated employees were subjected to
18 Defendants’ unlawful pay plans and its failure to pay overtime and/or double time based on the
19 regular rate of pay for all overtime and/or double time hours worked by Plaintiff and the class
20 members.

21 59. Defendants, and each of them, consistently administered a corporate policy which
22 required Plaintiff and the Class members to work overtime and/or double time without proper
23 premium overtime and/or double time pay at the correct regular rate of pay. Accordingly, Plaintiff
24 and the Class members were and are entitled to overtime and/or double time compensation, under
25 California law, at the appropriate regular rate of pay. Defendants have failed to properly include
26 items of remuneration when determining Plaintiff’s and the Class Members’ regular rate, this
27 includes but is not limited to the failure to include bonuses provided to Plaintiff and the Class
28 members.

60. Plaintiff and the class members have been deprived of rightfully earned overtime and/or double time compensation as a direct and proximate result of Defendants' common policies, practices, and refusal to pay the full amount of compensation earned for all overtime and/or double time hours worked.

61. Plaintiff, and the class, are entitled to and seek the full amount of all earned unpaid overtime and/or double time pay based on the correct regular rate of pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

In Violation of Labor Code §§226.7, 512, & Wage Order

(Against all Defendants on Behalf of Plaintiff and the Class)

62. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 52 of this Complaint.

63. Labor Code §226.7 requires an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each meal period the employer fails to provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members; in addition to impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hours work period. Plaintiff and the Class consistently worked over five (5) hour shifts without timely meal periods due to Defendants' policy of discouraging, dissuading and/or impeding Plaintiff and the Class from taking timely meal periods. During the Class Period, Defendants had a policy and/or practice of scheduling meal periods after the fifth hour of work. Defendants further failed to obtain legally compliant meal period waivers for shifts lasting longer than 10 hours or on-duty meal period agreements. Pursuant to the Code, Plaintiff and the Class were/are entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment and a second meal period for hours worked over ten (10) in a day.

1 64. Pursuant to Labor Code §512 and the applicable Wage Order, employees are
2 entitled to a meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and
3 the Class consistently worked over five (5) hour shifts without timely meal periods due to
4 Defendants' policy of discouraging, dissuading and/or impeding Plaintiff and the Class members
5 from taking meal periods, including but not limited to scheduling meal periods after the fifth hour
6 of work.

7 65. IWC Wage Order No. 1-2001 applies to Defendants and provides, in pertinent part,
8 that if an employer fails to allow an employee to take meal periods in accordance with the
9 applicable provisions of this Order, the employer shall pay the employee one hour of pay at the
10 employee's regular rate of compensation for each workday that the meal period was not provided.

11 66. During the relevant statutory time period, Defendants failed to authorize and permit
12 timely, duty-free, uninterrupted meal breaks. Plaintiff and Class members were routinely required
13 to work longer than five hours without a meal break at the direction of Defendants and/or with
14 Defendants' knowledge or acquiescence.

15 67. During the relevant statutory time period, Defendants failed to authorize and permit
16 the requisite number of meal breaks. Plaintiff and Class members were routinely required to work
17 longer than ten (10) hours without the requisite number of timely, duty-free, uninterrupted meal
18 breaks at the direction of Defendants and/or with Defendants' knowledge or acquiescence without
19 exemption.

20 68. By its actions in requiring employees to work longer than five hours without meal
21 periods and/or failing to provide Plaintiff and the Class members the requisite number of meal
22 periods for shifts lasting longer than ten hours without exemption, Defendants have violated
23 California Labor Code §226.7 and §11 of IWC Wage Order No. 1-2001 and are liable to Plaintiff
24 and the Class.

25 69. Defendants further failed to provide, impeded and/or discouraged Plaintiff and the
26 other class members from taking timely and compliant meal breaks of not less than thirty (30)
27 minutes as required by the Labor Code and IWC Wage Order No. 1-2001. During the Relevant
28 time period Defendants failed to obtain legal waivers waiving the first or second meal period or

1 providing for an on-duty meal period.

2 70. During the Relevant time period Defendants failed to pay meal period premiums at
3 the regular rate of pay in violation of Labor Code §226.7 and the applicable wage order.

4 71. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in
5 an amount equal to one (1) hour of wages at the regular rate of pay per missed meal break per day,
6 in a sum to be proven at trial.

7 72. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
8 Members seek recovery of pre-judgment interest on all amounts recovered herein.

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

11 **In Violation of Labor Code §§226.7, *et seq.*, & Wage Order**

12 (Against all Defendants on Behalf of Plaintiff and the Class)

13 73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 52 as
14 though fully set forth herein.

15 74. Labor Code §226.7(b) provides that “An employer shall not require an employee
16 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
17 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
18 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

19 75. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or
20 amend working condition orders with respect to break periods, meal periods, and days of rest for
21 any workers in California consistent with the health and welfare of those workers.”

22 76. The Wage Orders provide that every employer shall authorize and permit all
23 employees to take rest periods, which insofar as practicable shall be in the middle of each work
24 period. The authorized rest period time shall be based on the total hours worked daily at the rate
25 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
26 need not be authorized for employees whose total daily work time is less than three and one-half
27 (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall
28 be no deduction from wages.

1 77. Labor Code §226.7(b) and Section 12 of the applicable Wage Order require an
2 employer to pay one additional hour of compensation, at the regular rate of pay, per day for each
3 rest period the employer failed to provide pursuant to the Labor Code and/or applicable Wage
4 Order.

5 78. Plaintiff and the Class members worked over four (4) hours per shift and/or over
6 six (6) hours per shift.

7 79. Plaintiff and the Class members were entitled to a non-captive, duty-free, paid rest
8 period of not less than ten (10) minutes for every four hours worked or major fraction thereof, or
9 premium pay remedy of one hours pay at the regular rate of pay for each day in lieu of the same.

10 80. During the relevant time period, Defendants failed to provide legally compliant
11 non-duty free ten (10) minute paid rest periods to Plaintiff and the Class members and/or
12 Defendants failed to provide the requisite premium pay remedy for non-compliant and/or missed
13 rest periods.

14 81. As such, as a matter of Defendants' established company policy, Defendants failed
15 to authorize and permit all required paid rest periods established by Labor Code §§226.7 and 516
16 and Section 12 of the applicable Wage Order.

17 82. During the Relevant time period Defendants failed to pay rest period premiums at
18 the regular rate of pay in violation of Labor Code §226.7 and the applicable wage order

19 83. As a result of the unlawful acts of Defendants, Plaintiff and the Class members have
20 been deprived of legally compliant paid rest breaks and are entitled to recover damages under
21 Labor Code §226.7(b) and §12 of the applicable Wage Order in the amount of one additional hour
22 of compensation at their regular rate of pay for each day a paid rest break was not provided.

23 84. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
24 Members seek recovery of pre-judgment interest on all amounts recovered herein.

25 ///

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

3 **Violation Of Labor Code §226**

4 (Against all Defendants on Behalf of Plaintiff and the Class)

5 85. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 52 of this Complaint.

7 86. California Labor Code §226 provides:

8 (a) Every employer shall, semimonthly or at the time of each payment of wages,
9 furnish each of his or her employees, either as a detachable part of the check, draft,
10 or voucher paying the employee's wages, or separately when wages are paid by
11 personal check or cash, an accurate itemized statement in writing showing (1) gross
12 wages earned, (2) total hours worked by the employee, except for any employee
13 whose compensation is solely based on a salary and who is exempt from payment
14 of overtime under subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
16 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
17 provided that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
19 the period for which the employee is paid, (7) the name of the employee and only
20 the last four digits of his or her social security number or an employee identification
21 number other than a social security number, (8) the name and address of the legal
22 entity that is the employer..., and (9) all applicable hourly rates in effect during the
23 pay period and the corresponding number of hours worked at each hourly rate by
24 the employee...

25 87. Labor Code §226(e) provides that an employee is entitled to recover the greater of
26 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
27 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
28 penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely
and accurate itemized statements to the employees showing the gross wages earned by each of
them as well as the applicable hourly rates at the corresponding hours worked.

88. During the statutory time period, Defendants knowingly and intentionally failed to
provide its non-exempt employees such as Plaintiff, and all others similarly situated, with wage
statements reflecting the hours actually worked, gross wages earned, net wages earned, the

1 applicable hourly rates at the corresponding hours worked, and/or meal and/or rest period premium
2 payments.

3 89. The class members suffered injury as a result of Defendants' knowing and
4 intentional failure to provide Plaintiff and Class members with accurate itemized wage statements
5 during the relevant time period as the Class, including Plaintiff, were owed but not paid overtime
6 and/or double time compensation for all hours worked, and premium payments for meal and/or
7 rest periods which were not reflected on the wage statements or not paid at the accurate regular
8 rate of pay. Plaintiff and the class suffered injury as a reasonable person could not promptly and
9 easily determine from the wage statements alone the accurate amount of gross wages, the hours
10 worked, or the net wages earned for the pay period and/or the applicable hourly rates at the
11 corresponding hours worked.

12 90. Plaintiff and the class seek penalties pursuant to Labor Code §226(e), in an amount
13 to be determined at trial, and also seek costs and reasonable attorneys' fees pursuant to Labor Code
14 §226(e).

15 **FIFTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION**

17 **In Violation of Business and Professions Code §§17200, *et seq.***

18 (Against all Defendants on Behalf of Plaintiff and the Class)

19 91. Plaintiff and the class re-allege and incorporate by reference and re-allege each and
20 every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint
21 as if fully set forth herein.

22 92. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
23 least since four (4) years before the filing of this action, Defendants have engaged in a pattern and
24 practice of acts of unfair competition in violation of B&PC §17200, including the practices alleged
25 herein.

26 93. Defendants, and each of them, are "persons" as defined by Business and
27 Professions Code §17201.

28 94. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff sues
on his own behalf and on behalf of the current, former, and future employees of the Defendants

1 that were denied full amounts of earned double time and/or overtime pay, required to work shifts
2 without legally compliant meal and/or rest breaks periods and as parties harmed by Defendants
3 unfair business practices.

4 95. Plaintiff and the Class have suffered injuries-in-fact and have lost money as a result
5 of the Defendants' unfair competition alleged herein.

6 96. Defendants have previously or continue to engage in unlawful, unfair, and/or
7 fraudulent business practices, as alleged in this Complaint, in violation of California's B&PC
8 §17200 *et seq.* by:

- 9 a. Failing and refusing to pay the class, including Plaintiff, earned overtime
10 and double time wages in violation of Labor Code §§510 and 1194; and
- 11 b. Failing and refusing to provide the class, including Plaintiff, with meal
12 periods or premium payments at the regular rate of pay in lieu thereof in
13 violation of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001;
- 14 c. Failing and refusing to provide the class, including Plaintiff, with rest
15 periods or premium payments at the regular rate of pay in lieu thereof in
16 violation of Labor Code §§226.7, 512 and IWC Wage Order No. 1-2001;

17 97. All of these allegations constitute unfair business practices and/or unlawful
18 business practices in violation of California B&PC §17200, *et seq.*

19 98. Defendants have avoided payment of overtime wages, double time wages and other
20 benefits as required by the California Labor Code, the California Code of Regulations and
21 applicable IWC Wage Orders. As a result of Defendants' unfair business practices, Defendants
22 have reaped unfair benefits and illegal profits at the expense of Plaintiff, and others similarly
23 situated, and the members of the public. Defendants should be made to disgorge their ill-gotten
24 gains and to restore them to the Class, including Plaintiff.

25 99. Plaintiff and the putative class seek full restitution of said monies, as necessary and
26 according to proof, to restore any and all monies withheld and/or acquired by Defendants by means
27 of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff seeks, on
28 behalf of all current and former employees of Defendants, restitution of monies retained by
Defendants. Plaintiff further seeks, on behalf of himself and the putative class, the appointment of

1 a receiver, as necessary, to establish the total restitutionary relief from Defendants. The restitution
2 includes all wages withheld by Defendants as a result of the unfair, unlawful, and/or fraudulent
3 business practices; including interest thereon. Absent a statutory provision specifically governing
4 the type of claim at issue, the prejudgment interest rate is 10 percent. The acts complained of herein
5 occurred, at least in part, within the last four (4) years preceding the filing of the Complaint.

6 100. Plaintiffs is informed and believe and thereon allege that at all times herein
7 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
8 prohibited by California B&PC §17200, thereby depriving their employees and the putative class,
9 the minimum working condition, standards and conditions due to them under the California labor
10 laws and Industrial Welfare Commission wage orders as specifically described herein. Plaintiff
11 further seeks an order requiring Defendants to identify by full name, telephone number, and last
12 known address for all California non-exempt employees who worked or still work for Defendants
13 from four (4) years preceding the filing of the original Complaint through the date of class
14 certification. Plaintiff further seeks an order requiring Defendants to timely pay restitution to all
15 current and former employees, including back wages, and interest.

16 101. By and through its unfair, unlawful, and/or fraudulent business practices and acts
17 described herein, Defendants have obtained valuable services from Plaintiff and all persons
18 similarly situated and has deprived Plaintiff and all persons similarly situated of valuable rights
19 and benefits guaranteed by law, all to their detriment.

20 102. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
21 to and do seek such relief as may be necessary to restore to them the money and property which
22 Defendants have acquired, or of which Plaintiff and Class members have been deprived by mean
23 of the herein described unfair, unlawful, and/or fraudulent business practices.

24 103. Plaintiff, and all persons similarly situated, and all persons in interest, are further
25 entitled to and do seek a declaration that the above described business practices are unfair,
26 unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein
27 described unfair, unlawful, and/or fraudulent business practices.

28 104. Plaintiff and the Class request attorney's fees and costs pursuant to Code of Civil
Procedure §1021.5 since this action is brought to vindicate important rights of a large class and

1 the public.

2 **SIXTH CAUSE OF ACTION**

3 **PRIVATE ATTORNEYS GENERAL ACT**

4 **Violation of Labor Code §§2699, *et seq.***

5 (Against all Defendants)

6 105. Plaintiff on behalf of herself and on behalf of all other aggrieved employees herein
7 re-alleges and incorporates each and every one of the allegations contained in the preceding
8 paragraphs as if fully set forth herein.

9 106. Labor Code §§2698-2699, the Labor Code Private Attorney General Act of 2004,
10 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
11 Agency (LWDA), or any of its departments, divisions, commissions, boards, agencies or
12 employees for a violation of the Labor Code, may be recovered through a civil action by an
13 aggrieved employee on behalf of himself or herself, and collectively on behalf of all other current
14 or former employees.

15 107. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
16 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is authorized
17 to exercise the same discretion, subject to the same limitations and conditions to assess a civil
18 penalty.

19 108. Plaintiff and all other current and former non-exempt production employees of
20 Defendants who provided production services, in the state of California, are “aggrieved
21 employees” as defined by Labor Code §2699, in that they are all current or former employees of
22 Defendants, and one or more of the alleged violations was committed against them.

23 109. Plaintiff gave written notice electronically to the LWDA, and by certified mail to
24 Defendants, of the specific provisions of this code alleged to have been violated, including the
25 facts and theories to support the alleged violations as required by Labor Code §2699.3. More than
26 65 days has lapsed since notice to the LWDA and the LWDA has not indicated that it intends to
27 investigate Defendants’ Labor Code violations. Accordingly, Plaintiff may commence a civil
28 action to recover civil penalties for herself and other current and former employees under Labor
Code §2699 pursuant to §2699.3.

1 110. Plaintiff asserts all of the claims in this Complaint against Defendants, individually
2 and on behalf of all aggrieved employees in his capacity as private attorney general and seeks all
3 applicable civil penalties available under the Labor Code.

4 111. Pursuant to Labor Code §2699, Plaintiff, individually and on behalf of all aggrieved
5 employees, requests and seeks to recover from the Defendants; unpaid overtime and double time
6 wages, rest period premiums, meal period premiums, and wage statement violations and penalties
7 according to proof. Plaintiff is further entitled to attorneys' fees and costs pursuant to Labor Code
8 §2699(g)(1), as well as all civil penalties, including, but not limited to:

- 9 a. Penalties under Code of Regulations, Title 8 §11090 in the amount of \$50 for
10 each aggrieved employee per pay period for the initial violation, and \$200 for
11 each aggrieved employee per pay period for each subsequent violation;
- 12 b. Penalties under Labor Code §558, in addition to and entirely independent and
13 apart from other penalties provided under the Labor Code, in the amount of \$50
14 for each underpaid aggrieved employee for each pay period the aggrieved
15 employee was underpaid in addition to an amount sufficient to recover
16 underpaid wages, and \$100 for each subsequent violation for each underpaid
17 employee for each pay period for which the employee was underpaid in addition
18 to an amount sufficient to recover underpaid wages, with all wages recovered
19 pursuant to Labor Code §558 provided to the affected employees;
- 20 c. Penalties under Labor Code §1197.1, in addition to and entirely independent
21 and apart from other penalties provided in the Labor Code, at \$100 for each
22 underpaid employee for each pay period for the initial offense and \$200 for
23 each subsequent offense; and
- 24 d. Penalties under Labor Code §2699(f), in addition to and entirely independent
25 and apart from other penalties provided in the Labor Code and for Labor Code
26 violations without a specific civil penalty, in the amount of \$100 for each
27 aggrieved employee per pay period for each violation, and \$200 for each
28 aggrieved employee per pay period for each subsequent violation;

112. Any and all additional civil penalties and sums as provided by the Labor Code

1 and/or other statutes.

2 113. Plaintiff seeks and is entitled to have 75% of all penalties obtained be allocated to
3 the LWDA and 25% to aggrieved employees.

4 114. Further, Plaintiff is entitled to seek and recover reasonable attorney's fees and costs
5 pursuant to Labor Code §§2699(g)(1).D

6 **PRAYER FOR RELIEF**

7 Plaintiff and the Class members pray for judgment as follows:

- 8 1. An order that the action be certified as a class action;
- 9 2. An order that Plaintiff be appointed class representative;
- 10 3. An order that counsel for Plaintiff be appointed class counsel;
- 11 4. An order requiring Defendants to identify, by name, address and telephone number each
12 person who worked as a California hourly non-exempt employee who provided production
13 services for the period of four (4) years preceding the filing of the initial complaint through
14 the date of class certification;
- 15 5. For all unpaid wages due to Plaintiff and each Class member and liquidated damages, in
16 amounts to be proven at trial;
- 17 6. For all unpaid overtime and double time wages due Plaintiff and each Class member;
- 18 7. For the full amount of unpaid minimum wages and liquidated damages due Plaintiff and
19 each Class member pursuant to Labor Code §§ 1194 and 1194.2 and the Wage Order;
- 20 8. For restitution of all unpaid wages due Plaintiff and each Class member;
- 21 9. For all applicable statutory penalties, in amounts to be proven at trial;
- 22 10. For all applicable civil penalties, in amounts to be proven at trial;
- 23 11. For an award of statutory penalties pursuant to section 226(e) of the California Labor Code,
24 in amounts to be proven at trial;
- 25 12. For general damages including compensatory damages according to proof;
- 26 13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal.
27 Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or
28 deemed equitable by the Court;

- 1 14. For all applicable interest on damages, wages, expenses, and penalties due;
- 2 15. For injunctive relief to prevent further violations of the California Labor Code;
- 3 16. For declaratory relief that Defendants engaged in unfair practices;
- 4 17. For declaratory relief that Defendants violated Labor Code §§ 226, 226.7, 510, 512, 1194,
- 5 and 1194.2;
- 6 18. For restitution of all moneys due to Plaintiffs and Class members, and disgorged profits
- 7 from the unlawful and/or unfair business practices of Defendants, pursuant to California
- 8 Business & Professions Code §17200;
- 9 19. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §226(f), 1194(a),
- 10 and Code of Civil Procedure §1021.5;
- 11 20. For one (1) hour of pay at each of the employees' regular rate of compensation for each
- 12 workday that a legally compliant meal break was not provided, impeded, discouraged,
- 13 and/or dissuaded;
- 14 21. For one (1) hour of pay at each of the employees' regular rate of compensation for each
- 15 workday that a legally compliant rest break was not provided, impeded, discouraged,
- 16 and/or dissuaded;
- 17 22. On behalf of Plaintiff and all other aggrieved employees and the LWDA, for all civil
- 18 penalties authorized by LC §2699, including but not limited to:
- 19 a) For civil penalties pursuant to LC §558 as follows:
- 20 i. For any initial violation, fifty dollars (\$50) for each underpaid employee
- 21 for each pay period for which the employee was underpaid in addition to
- 22 an amount sufficient to recover underpaid wages;
- 23 ii. For each subsequent violation, one hundred dollars (\$100) for each
- 24 underpaid employee for each pay period for which the employee was
- 25 underpaid in addition to an amount sufficient to recover underpaid wages;
- 26 iii. For any and all unpaid wages that shall be paid to the affected employees;
- 27 d) For civil penalties per Code of Regulations, Title 8 §11090 in the amount of \$50
- 28 for each aggrieved employee per pay period for the initial violation, and \$200 for

each aggrieved employee per pay period for each subsequent violation;

e) For civil penalties per Labor Code §1197.1, in the amount of:

- i. \$100 for each underpaid employee for each initial pay period for which the employee was intentionally underpaid;
- ii. \$200 for each underpaid employee for each subsequent pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed; and
- iii. Any and all wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to Labor Code §1197.1 to be paid to the affected employee;

23. For civil penalties under LC §2699(f), in addition to and entirely independent and apart from other penalties provided in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, and;

24. For all such other and further relief that the Court may deem just and proper.

Date: December 20, 2022

THE MYERS LAW GROUP, A.P.C.



David P. Myers,
Jason Hatcher,
Cassandra A. Castro
Attorneys for Plaintiff and others similarly situated

PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On December 20, 2022, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT** by serving the interested parties in this action addressed as follows:

Alexander M. Chemers, Esq.
alexander.chemers@ogletree.com
Kristin N. Kovaciach, Esq.
kristen.kovacich@ogletree.com
Sally Navarrete
sally.navarrete@ogletree.com
Cecile Allouche
cecile.allouche@ogletree.com
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA. 90071

I am “readily familiar” with the firm’s practice of services of process. Under that practice, this document would be deposited:

(BY MAIL): with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.

(BY UPS) Overnight Delivery with the envelope placed in or with a facility maintained by the overnight delivery carrier with fees paid for or provided for.

(BY PERSONAL SERVICE) I caused such envelope(s) to be personally served by messenger to the above addresses(s)

X
(BY ELECTRONIC SERVICE) I served the document(s) described above by emailing to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. My email address is wcarlos@myerslawgroup.com

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

Executed December 20, 2022 at Monrovia, California.



Warquiria Carlos