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County of Los Angeles

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ANDREW LUEVANO, on behalf
6 of himself and all others similarly situated

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

10
11 **ANDREW LUEVANO, on behalf of himself)**
and all others similarly situated,)

12 **Plaintiffs,)**

13
14 **v.)**

15 **UNITED STATES BAKERY, an Oregon)**
16 **corporation; and DOES 1 through 100,)**
17 **Inclusive)**

18 **Defendants.)**

CASE NO.: 22STCV37516

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

1. **FAILURE TO PAY OVERTIME WAGES;**
2. **FAILURE TO PAY MINIMUM WAGE;**
3. **FAILURE TO PAY SICK LEAVE;**
4. **FAILURE TO PAY ALL WAGES UPON TERMINATION;**
5. **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
6. **UNFAIR COMPETITION;**
7. **CIVIL PENALTIES LABOR CODE §2699;**
8. **FAILURE TO PROVIDE MEAL PERIODS; and**
9. **FAILURE TO PROVIDE REST PERIODS**

DEMAND FOR JURY TRIAL

COMES NOW plaintiff ANDREW LUEVANO (hereinafter "Mr. Luevano" and/or "Plaintiff) on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on behalf of Plaintiff and all other current and former similarly situated employees employed by or formerly employed by UNITED STATE BAKERY and any subsidiaries or affiliated companies (hereinafter referred to as "Defendants"), within the State of California.

2. For at least four (4) years prior to the filing of this action and through the present, Defendants on multiple occasions have had a pattern and practice of failing to pay wages for all time worked, including overtime wages, as a result of Defendants requiring Plaintiff and other non-exempt employees in the State of California to undergo COVID-19 temperature checks prior to clocking in for the start of their work shifts.

3. For at least four (4) years prior to the filing of this action and through the present, Defendants on multiple occasions have had a pattern and practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California, as a result of Defendants failure to include all forms of remuneration, including but not limited to "Night 24, Night 25" etc., in determining the regular rate of pay.

4. For at least four (4) years prior to the filing of this action and through the present Defendants on multiple occasions have had a pattern and practice of failing to pay sick leave and/or PTO at the regular rate of pay to Plaintiff and other non-exempt employees in the State of California, as a result of Defendants' failure to include all forms of remuneration, including but not limited to, "Night 24, Night 25", etc., when determining the regular rate of pay for purposes of sick leave and/or PTO pay.

5. For at least four (4) years prior to the filing of this action and through the present Defendants on multiple occasions have had a pattern and practice of rounding Plaintiff and other non-exempt employees in the State of California meal breaks which resulted in the underpayment of wages to Plaintiff and similarly situated employees.

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

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

15 8. For at least three (3) years prior to the filing of this action and continuing through
16 the present, Defendants on multiple occasions have failed to pay Plaintiff and other similarly
17 situated employees the full amount of their wages owed to them upon termination and/or
18 resignation as required by Labor Code §§ 201 or 202.

19 9. For at least one (1) year prior to the filing of this action and continuing through the
20 present, Defendants on multiple occasions have failed to issue Plaintiff and other similarly situated
21 employees accurate wage statements as required by Labor Code § 226.

22 10. Plaintiff, on behalf of himself and all other similarly situated employees, brings this
23 action pursuant to, including but not limited to, California Labor Code §§200, 201, 202, 203, 204,
24 210, 226, 226.3, 226.7, 233, 246, 246.5, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699, et seq.,
25 and California Code of Regulations, Title 8, §11070, seeking unpaid overtime and minimum
26 wages, unpaid sick leave pay, failure to pay regular rate, premium wages for non-compliant meal
27 and rest periods, statutory penalties, civil penalties and reasonable attorney's fees and costs.

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

4 **PARTIES**

5 **A. Plaintiff**

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

11 13. Plaintiff, Mr. Luevano, is a resident of the State of California. At all relevant times
12 herein, he has been employed by Defendants as a non-exempt employee in California.

13 **B. Defendants**

14 14. Defendant, United States Bakery, is a bread and pastry manufacturer within the
15 State of California. Defendant employed Plaintiff and similarly situated persons within the State of
16 California.

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

24 16. Plaintiff is informed and believes, and based thereon alleges, that each defendant
25 acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint
26 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
27 legally attributable to the other defendants.

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FACTUAL BACKGROUND

17. Defendants on multiple occasions have had a pattern and practice of not compensating Plaintiff and other similarly situated employees wages for all time worked, including overtime wages, as a result of requiring Plaintiff and other California non-exempt employees to undergo COVID-19 temperature checks and screening prior to the start of their work shifts and not compensating them for this time. That is, Plaintiff and other non-exempt employees were required to wait in line and undergo temperature checks for COVID-19 prior to the start of their shifts Plaintiff and other non-exempt employees could not use this time for their own purposes. As such, Defendants exercised sufficient control over Plaintiff and other non-exempt employees during these required temperature checks and owes them wages for this time.

18. Defendants on multiple occasions have had a pattern and practice of failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California, a result of Defendants' pattern and practice of failing to include all forms of remuneration, including but not limited to "Night 24, Night 25" shift differential pay, etc., in determining the regular rate of pay.

19. Defendants on multiple occasions have had a pattern and practice of failing to pay sick leave and/or PTO to Plaintiff and other non-exempt employees in the State of California, as a result of Defendants' failure to include all forms of remuneration, including but not limited to "Night 24, Night 25" shift differential pay, etc., when determining the regular rate of pay for purposes of sick leave and/or PTO pay.

20. Defendants on multiple occasions have had a pattern and practice of rounding Plaintiff and other non-exempt employees in the State of California meal breaks which resulted in the underpayment of wages to Plaintiff and similarly situated employees.

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

1 periods.

2 22. Defendants have had a pattern and practice of on multiple occasions failing to
3 provide Plaintiff and similarly situated employees or former employees within the State of
4 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
5 thereof and on multiple occasions failing to provide compensation at the regular rate of pay for
6 such unprovided rest periods as required by California wage and hour laws.

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

10 24. Defendants have failed to comply with Labor Code §226(a) by, on multiple
11 occasions, not providing itemized wage statements accurately showing, including but not limited
12 to, the total hours worked during the pay period and pay due and owing for failure to pay wages as
13 described herein.

14 25. At the time Plaintiff's employment and the employment of other former employees
15 of Defendants ended, Defendants on multiple occasions willfully failed to pay all earned wages as
16 described herein.

17 **CLASS ACTION ALLEGATIONS**

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

21 **Non-Exempt Employee Class**

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

25 **Late Pay Class**

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

1 **Wage Statement Class**

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

7 **Meal Period Class**

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

12 **Rest Period Class**

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

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

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

23 A. **Numerosity**

24 29. The potential members of the Class as defined are so numerous that joinder of all
25 the members of the Class is impracticable. While the precise number of Class Members has not
26 been determined at this time, Plaintiff is informed and believes that there are over 100 Class
27 Members employed by Defendants within the State of California.

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

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1 **B. Commonality**

2 31. There are questions of law and fact common to Class Members. These common
3 questions include, but are not limited to:

- 4 (1) Did Defendants violate Labor Code §1194 by not compensating Class
5 Members overtime wages?
- 6 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
7 Members minimum wages for all hours worked?
- 8 (3) Did Defendants violate Labor Code §§233, 246, 246.5 by not paying Class
9 Members for sick leave at the regular rate?
- 10 (4) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
11 Members upon termination or resignation all wages earned?
- 12 (5) Are Defendants liable to Class Members for penalty wages under Labor
13 Code § 203?
- 14 (6) Did Defendants violate Labor Code § 226(a) by not furnishing Class
15 Members with accurate wage statements?
- 16 (7) Did Defendants violate the Unfair Competition Law, Business and
17 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
18 herein?
- 19 (8) Are Class Members entitled to restitution of penalty wages under Business
20 and Professions Code § 17203?
- 21 (9) Are Class Members entitled to attorney's fees?
- 22 (10) Are Class Members entitled to interest?
- 23 (11) Did Defendants violate Labor Code § 512 by not providing Class Members
24 with meal periods?
- 25 (12) Did Defendants violate Labor Code § 226.7 by not providing Class Members
26 additional wages at the regular rate of pay for missed or interrupted meal
27 periods?

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1 (13) Did Defendants violate Labor Code §226.7 by not providing Class Members
2 additional wages at the regular rate of pay for missed rest periods?

3 C. Typicality

4 32. The claims of Plaintiff herein alleged are typical of those claims which could be
5 alleged by any member of the classes, and the relief sought is typical of the relief which would be
6 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
7 Classes sustained injuries and damages arising out of and caused by Defendants' common course of
8 conduct in violation of laws and regulations that have the force and effect of law and statutes as
9 alleged herein.

10 D. Adequacy of Representation

11 33. Plaintiff will fairly and adequately represent and protect the interests of the members
12 of the Classes. Counsel who represents Plaintiff is competent and experienced in litigating wage
13 and hour class actions.

14 E. Superiority of Class Action

15 34. A class action is superior to other available means for the fair and efficient
16 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
17 questions of law and fact common to the Class predominate over any questions affecting only
18 individual members of the Class. Each member of the Class has been damaged and is entitled to
19 recovery by reason of Defendants' illegal pattern and practice of on multiple occasions failing to
20 pay overtime wages, failing to pay minimum wages, failing to provide accurate itemized wage
21 statements, failing to pay all wages due upon termination and/or resignation, failing to pay sick
22 leave, failing to provide meal and rest breaks or compensation in lieu thereof as described herein.

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

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

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

6 37. At all times relevant to this complaint, California Labor Code §510 was in effect
7 and provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours
8 in one workday and any work in excess of forty hours in any one workweek . . . shall be
9 compensated at the rate of no less than one and one-half times the regular rate of pay for an
10 employee." Overtime pay is computed based on the regular rate of pay. The regular rate
11 of pay includes many different kinds of remuneration. Under California law, the determination of
12 regular rate of pay for purposes of determining overtime pay must include the employee's
13 commissions, bonuses, or other non-hourly compensation.

14 38. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
15 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
16 forty hours in a work week and on multiple occasions these employees were not paid overtime
17 wages for all hours worked as a result of, including but not limited to, Defendants requiring Plaintiff
18 and Non-Exempt Employee Class to undergo COVID-19 temperature checks and screening prior to
19 clocking in for the start of their work shifts.

20 39. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class, on
21 multiple occasions worked for Defendants during shifts that consisted of more than eight hours in a
22 work day and/or more than forty hours in a work week while concurrently earning other forms of
23 remuneration and on these multiple occasions employees have not been paid overtime wages as a
24 result of Defendants' pattern and practice of failing to include all forms of remuneration, including
25 but not limited to "Night 24, Night 25" shift differential pay, etc., in determining the regular rate of
26 pay for overtime purposes.

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1 of remuneration, including but not limited to "Night 24, Night 25" shift differential pay, etc., in
2 determining the regular rate of pay for purposes of sick leave pay.

3 53. Labor Code § 233 provides that "any employer who provides sick leave for
4 employees shall permit an employee to use in any calendar year the employee's accrued and
5 available sick leave entitlement, in an amount not less than sick leave that would be accrued during
6 six months at the employee's then current rate of entitlement, for the reasons specified in
7 subdivision (a) of Section 246.5."

8 54. At all times herein mentioned, Defendants intentionally and willfully failed to pay
9 Plaintiff and the Non-Exempt Employee Class their sick leave at the regular rate of pay.
10 Accordingly, Plaintiff and the Non-Exempt Employee Class did not receive the full amount of paid
11 sick leave that they were entitled to receive by law, and therefore denied the right to use sick leave
12 within the meaning of Labor Code §§ 233(a) and (c).

13 55. Any employer who violates Labor Code § 233 is liable to employees for the greater
14 of one days' pay or actual damages, reasonable equitable relief and reasonable attorney's fees and
15 costs.

16 56. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt
17 Employee Class have been deprived of sick leave pay in amounts to be determined at trial, and are
18 entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs,
19 pursuant to Labor Code §§233, 246, 246.5, 558 and 2698; and Code of Civil Procedure §1021.5;
20 and Civil Code §3287.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PAY ALL WAGES UPON TERMINATION**

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

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

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

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1 59. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
2 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
3 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
4 to discharge immediately upon termination. Employees who resigned were entitled to payment of
5 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
6 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
7 unpaid at the time of resignation.

8 60. Defendants failed to pay Plaintiff and other members of the Late Pay Class all
9 wages earned and unpaid prior to termination in accordance with Labor Code §§ 201 or 202.
10 Plaintiff and other members of the Late Pay Class are informed and believe and thereon allege that
11 within the applicable limitations period, Defendants on multiple occasions had a pattern and
12 practice of not paying upon termination, the wages owed to them as a consequence of failing to pay
13 non-exempt employees for earned wages, as described herein.

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff and the Class Against All Defendants)

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

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

16 69. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
17 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
18 accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly
19 rates in effect during the pay period, the corresponding number of hours worked at each hourly rate
20 by the employee, and Defendants' address on the wage statement.

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

23 71. Plaintiff and the other members of the Wage Statement Class are informed and
24 believe and thereon allege that at all relevant times, Defendants maintained and continue to
25 maintain a policy and practice of issuing wage statements that do not show, including but not
26 limited to, all hours worked and all earned wages and pay due for all hours worked at applicable
27 rates of pay. Defendants' practices resulted and continue to result in, the issuance of Wage
28 Statements to Plaintiff and other members of the Class that do not comply with the itemization

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

13 74. Pursuant to Labor Code § 226(e), Plaintiff and other members of the Wage
14 Statement Class are entitled to recover \$50 for the initial pay period during the period in which
15 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
16 subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

25 77. The unlawful conduct of Defendants alleged herein constitutes unfair competition
26 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
27 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
28 other comparable companies doing business in the state of California that comply with their

1 obligations to compensate employees in accordance with the Labor Code.

2 78. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
3 similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff
4 and similarly situated Class Members have been deprived from being compensated overtime
5 wages, from being compensated minimum wage, from not being compensated all accrued sick pay,
6 and from not being provided with meal and rest breaks or compensation in lieu thereof, as
7 described herein.

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

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

17 **SEVENTH CAUSE OF ACTION**

18 **CIVIL PENALTIES LABOR CODE §2699 et seq.**

19 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

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

22 82. Plaintiff has complied with the procedures for bringing suit specified in Labor
23 Code §2699.3. On or about November 30, 2022 and on March 1, 2024, Plaintiff gave written
24 notice and amended written notice to the Labor and Workforce Development Agency ("LWDA")
25 and to Defendants of the specified provisions of the Labor Code alleged to have been violated and
26 Plaintiff anticipates that the LWDA will elect not to investigate.

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1 83. During the period beginning one year period preceding the filing of Plaintiff's
2 written notice to the LWDA (the "Civil Penalty Period"), Defendants violated, including but not
3 limited, to Labor Code §§200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233, 246, 246.5, 510,
4 512, 558, 1194, 1194.2, 1197 and 1197.1.

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

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

13 86. In addition to the civil penalties recoverable under Labor Code §2699(a) and
14 (f), to the extent permitted by law, Defendants' failure to provide Plaintiff and aggrieved
15 employees with accurate itemized wage statements, as described herein, entitles Plaintiff to seek
16 separate civil penalties for Defendants' violation of Labor Code §226 (a) and 226 (e). For
17 violations of Labor Code §226 (a), Plaintiff seeks civil penalties provided by Labor Code §226.3.
18 Pursuant to Labor Code § 226.3, "[a]ny employer who violates subdivision (a) of section 226 shall
19 be subject to a civil penalty in the amount of two hundred dollars (\$250) per employee per
20 violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation
21 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
22 statement or fails to keep the required in subdivision (a) of section 226." Accordingly, Plaintiff
23 and aggrieved employees are entitled to recover civil penalties for violations of Labor Code §
24 226.3 and seeks default civil penalties for each of Defendants' numerous violations of Labor Code
25 §226 (e).

26 87. In addition, pursuant to Labor Code §1197.1, subdivision (a): "Any employer or
27 other person acting either individually or as an officer, agent, or employee of another person, who
28 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable

1 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
2 wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant
3 to Section 203 as follows:

- 4 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
5 for each unpaid employee for each pay period of which the employee is underpaid.
6 This amount shall be in addition to an amount sufficient to recover underpaid
7 wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
8 imposed pursuant to Section 203.
- 9 b. For each subsequent violation for the same specific offence, two hundred fifty
10 dollars (\$250) for each underpaid employee for each pay period fo which the
11 employee is underpaid regardless of whether the initial violation is intentionally
12 committed. This amount shall be in addition to an amount sufficient to recover
13 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
14 applicable penalties imposed pursuant to Section 203.
- 15 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
16 Section 203, recovered pursuant to this section shall be paid to the affected
17 employee.”

18 Plaintiff is informed and believes, and based thereon alleges, that Defendants’ caused Plaintiff and
19 aggrieved employees not to be paid minimum wages as a result of Defendants, without limitation,
20 routinely failing to pay Plaintiff and other aggrieved employees’ wages for all hours worked or
21 otherwise under Defendants’ control due to, without limitation, routinely failing to accurately track
22 and/or pay for all hours actually worked; and engaging, suffering, or permitting employees to work
23 off the clock. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
24 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
25 Labor Code §1197.1.

26 88. In addition to the civil penalties recoverable under Labor Code §2699(a) and
27 (f), to the extent permitted by law, Defendants’ failure to pay Plaintiff and other aggrieved
28 employees timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for

1 Defendants' violation of Labor Code §§ 204 and 210. Specifically, Defendants failed to pay all
2 wages owed within seven days of the close of the payroll period in accordance with Labor Code
3 §204(d). Labor Code §210 (a) provides that "in addition to, and entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for
6 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for
7 each subsequent violation, or any wilful or intentional violation, two hundred dollars (\$200) for
8 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."
9 Accordingly, Plaintiff and aggrieved employees are entitled to recover civil penalties for violations
10 of Labor Code §§ 204 and 210.

11 89. Lastly, pursuant to Labor Code § 558 any employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare Commission
14 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
15 each underpaid employee for each pay period for which the employee was underpaid in addition to
16 an amount sufficient to recover underpaid wages; and (2) For each subsequent violation, one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
18 was underpaid in addition to an amount sufficient to recover underpaid wages. As indicated
19 herein, Plaintiff and aggrieved employees were underpaid wages as a result of the asserted Labor
20 Code violations and therefore are entitled to recover civil penalties under Labor Code §558.

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

24 EIGHTH CAUSE OF ACTION

25 FAILURE TO PROVIDE MEAL PERIODS

26 (By Plaintiff and the Class Against All Defendants)

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

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

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

15 94. By their failure on multiple occasions to provide Plaintiff and members of the Meal
16 Period Class with the meal periods contemplated by California law, and failing to provide
17 compensation for such unprovided meal periods at the regular rate of pay, as alleged above,
18 Defendants willfully violated the provisions of Labor Code §512 and applicable Wage Orders.

19 95. As a result of Defendants' unlawful conduct Plaintiffs and the other members of
20 the Meal Period Class have suffered damages in an amount, subject to proof, to the extent they
21 were not paid premium wages at the regular rate of pay, owed for missed meal periods.

22 96. Plaintiff and the other members of the Meal Period Class are entitled to recover the
23 full amount of their unpaid additional premium pay for missed meal periods. Pursuant to Code of
24 Civil Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to
25 recover reasonable attorney's fees and costs of suit.

26 97. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
27 Class are entitled to recover prejudgment interest on the additional premium pay owed for missed
28 meal periods.

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

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

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

6 99. California law and applicable Wage Orders require that employers
7 "authorize and permit" employees to take paid 10 minute rest periods in about the middle of each
8 4-hour work period "or major fraction thereof." Accordingly, employees who work shifts of 3 ½ to
9 6 hours must be provided 10 minutes of paid rest period, employees who work shifts of more than
10 6 and up to 10 hours must be provided with 20 minutes of paid rest period, and employees who
11 work shifts of more than 10 hours must be provided 30 minutes of paid rest period. Plaintiff and
12 other members of the Rest Period Class on multiple occasions were not provided with requisite rest
13 periods as contemplated under the law.

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

19 101. By their failure on multiple occasions to provide Plaintiff and other members
20 of the Rest Period Class with the rest periods contemplated by California law, and failing to
21 provide compensation for such unprovided rest periods, as alleged above, Defendants willfully
22 violated the provisions of Labor Code §226.7 and applicable Wage Orders.

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

26 ///

27 ///

28 ///

1 103. Plaintiff and the other members of the Rest Period Class are entitled to recover the
2 full amount of their unpaid additional premium pay for missed rest periods. Pursuant to Code of
3 Civil Procedure §1021.5, Plaintiff and the other members of the Rest Period Class are entitled to
4 recover reasonable attorney's fees and costs of suit.

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

PRAYER

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

- 11 A. An order certifying that Plaintiff may pursue his claims against Defendants as a
12 class action on behalf of the Class Members;
- 13 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;
- 15 C. Penalties for inaccurate wage statements under Labor Code §226(e);
- 16 D. Damages for unpaid wages under Labor Code §§201 or 202;
- 17 E. Damages for unpaid penalty wages under Labor Code §203;
- 18 F. Damages for minimum wages;
- 19 G. Liquidated damages for unpaid minimum wages;
- 20 H. Damages for unpaid overtime wages under Labor Code §1194;
- 21 I. Damages for failure to pay sick pay and/or PTO at the regular rate;
- 22 J. Restitution under Business and Professions Code §17203;
- 23 K. Civil Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f);
- 24 L. Damages for unpaid wages for missed meal periods under Labor Code §226.7;
- 25 M. Damages for unpaid wages for missed rest periods under Labor Code §226.7;
- 26 N. Damages for premium wages;
- 27 O. Pre-judgment interest;
- 28 P. Costs;

1 Q. Reasonable attorney's fees; and

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

3
4 DATED: March 1, 2024

THE NOURMAND LAW FIRM, APC

5
6 By:



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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within entitled action; my business address is 8822 West Olympic
Boulevard, Beverly Hills, California 90211.

5 On May 14, 2024, I served the following document(s) described as:

6 **SECOND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND
7 RESTITUTION**

8 on the interested parties in this action as follows:

9 Ryan L. Eddings, Esq.
10 LITTLER MENDELSON, P.C.
5200 North Palm Avenue, Suite 302
Fresno, California 93704

11 BY NOTICE OF ELECTRONIC FILING THROUGH CASE ANYWHERE: I caused a
12 true and correct copy of the above listed document(s) to be served by electronic transmission to the
13 parties and/or counsel who are registered above and set forth in said service list.

14 I declare under penalty of perjury under the laws of the State of California that the above is
15 true and correct and that this Proof of Service was executed on May 14, 2024, at Beverly Hills,
California.

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18 Alejandra Beltran
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