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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JAN 25 2024

BY  VERONICA GONZALEZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSE de JESUS RODRIGUEZ, individually,
and on behalf of all other aggrieved
employees,

Plaintiff,

v.

ASC STAFFING GROUP, LLC, a California
Limited Liability Company; TST/IMPRESO,
INC., a Texas Corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NUMBER: CIVSB2306019

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay Timely Wages
6. Failure to Pay All Wages Due to Discharged and Quitting Employees
7. Failure to Furnish Accurate Itemized Wage Statements
8. Failure to Maintain Required Records
9. Failure to Reimburse for Business Expenses
10. Unfair Business Practices

REPRESENTATIVE ACTION

11. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL

INTRODUCTION

This is a class action brought by Jose de Jesus Rodriguez ("Plaintiff"), on behalf of himself and all other similarly situated individuals, against ASC Staffing Group, LLC ("ASC") and TST/Impreso, Inc. ("TST") (collectively "Defendants") in order to hold Defendants accountable for their wage theft and other violations of California wage and hour laws. Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his respective personal knowledge.

1. ASC is a private staffing company which provides temporary employees to work for other businesses in need of short or long term staffing needs.

2. TST is a manufacturer of engineering rolls and other continuous paper, laser printer and copier paper, point of sale ATM rolls, computer paper, and specialty ink jet paper.

3. As private, for-profit businesses, Defendants have jointly implemented common policies and practices that have resulted in systemic violations of California's wage and hour laws.

4. Defendants maximized profits by cutting labor costs, grossly understaffing TST's facilities, denying meal and rest breaks, systematically depriving wages due based upon Defendants illegal rounding policies which deprive Plaintiff and the other Class members of their wages, and cheating their employees out of minimum and overtime wages and premium payments.

5. Defendants further implemented unlawful written policies with respect to meal and rest breaks. Defendants also require their non-exempt employees, who are informed that the needs of the businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and to remain on call during such breaks. As a result, Plaintiff and other Class members have been denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for himself and a Class of all current and former non-exempt employees of Defendants during the applicable limitations period to compensate these workers for the wages Defendants have stolen from them and to protect current and future workers from being subjected to similar unlawful working conditions perpetrated by Defendants.

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1 at all times relevant hereto were, is a California limited liability, organized and existing under the
2 laws of the State of California. Defendant ASC is authorized to conduct business and does conduct
3 business in the State of California.

4 14. Plaintiff is informed and believes, and thereon alleges, that Defendant TST is, and
5 at all times relevant hereto was, a corporation organized and existing under the laws of the State of
6 Texas and license to do business in the State of California.

7 15. During the statute of limitations period, Defendants have conducted business in the
8 State of California.

9 16. Defendants employ Class Members who work at Defendant TST's facilities.

10 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
12 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
13 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
14 employer and/or joint employer of Plaintiff and the other aggrieved employees.

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

22 19. Plaintiff is informed and believes, and based thereon alleges, that each of the
23 Defendants sued herein were, at all relevant times, the employer, owner, shareholder, principal, joint
24 venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants,
25 and were acting, at least in part, within the course and scope of such employment and agency, with
26 the express and implied permission, consent and knowledge, approval and/or ratification of the other
27 Defendants. The above co-Defendant, managing agents, and supervisors, aided, abetted, condoned,
28 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

20. On December 30, 2022, Plaintiff provided Defendants with notice pursuant to Labor Code §2810.3 with regard to potential joint liability based upon violations of the Labor Code as provided herein. Defendant ASC, for all purposes of this action, is a the “labor contractor” pursuant to Labor Code §2810.3 and Defendant TST is the “client employer” and shall share any and all civil liability for all of the Class members supplied by Defendant ASC for any and all penalties imposed as a result of this action.

21. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and capacities of such DOE defendants when ascertained.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of himself, and the following similarly situated Class of individuals ("Class members"):

All non-exempt employees who were provide by ASC to work at TST and all non-exempt employees who were directly hired by TST, who worked at TST's facilities at any time in the state of California during the relevant statute of limitations period.

23. Plaintiff reserves the right to name additional Class representatives as may be necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the proposed Class and/or add subclasses before the Court determines whether certification is appropriate.

24. This action is appropriately suited for a class action because:

A. The proposed Class is a significant number. Plaintiff is informed and believes that the proposed Class consists of at least 100 current and former non-exempt employees. Joinder of all current and former non-exempt employees individually would be impractical and this action is the most efficient way to prosecute the claims.

1 B. This action involves common questions of law and fact to the proposed
2 Class because the action focuses on the Defendants systematic course of illegal payroll practices
3 and policies, which was applied to all non-exempt employees in uniform violation of the
4 California Labor Code, IWC Wage Orders, and the California Business and Professions Code,
5 which prohibits unfair business practices arising from such violations. Here are a few common
6 questions of law and fact that can be answered on a classwide basis:

- 7 • Whether Defendants failed to provide non-exempt employees with
8 legally compliant meal periods and rest breaks;
- 9 • Whether Defendants failed to pay overtime to non-exempt
10 employees in compliance with California law;
- 11 • Whether Defendants failed to pay minimum wages to non-exempt
12 employees in compliance with California law
- 13 • Whether Defendants unlawfully rounded down the time worked by
14 non-exempt employees;
- 15 • Whether Defendants failed to timely pay wages to non-exempt
16 employees in compliance with California law;
- 17 • Whether Defendants failed to maintain required records and accurate
18 wage statements for non-exempt employees; and
- 19 • Whether Defendants engaged in unfair and/or unlawful business
20 practices.

21 C. Plaintiff's claims are typical of the proposed Class because Defendants
22 subjected all of their non-exempt employees to the similar and overlapping violations of the
23 California Labor Code, the applicable IWC wage order, and the California Business and
24 Professions Code.

25 D. Plaintiff is able to fairly and adequately protect the interests of all members
26 of the proposed Class because it is in his best interests to prosecute the claims alleged herein to
27 obtain full compensation due to the proposed Class for all services rendered and hours worked.
28 Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION
Failure to Provide Required Meal Periods
[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; and All Applicable IWC
Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class Against all Defendants)

25. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 24 (A) – (D).

26. During the statute of limitations period, as part of Defendants' unlawful policies and practices to deprive their non-exempt employees of all wages earned and due, Defendants required, permitted or otherwise suffered Plaintiff and Class members to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise failed to provide the required meal periods to Plaintiff and Class members as required under California Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

27. Defendants have implemented several common policies and practices that have caused Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.

28. Defendants grossly understaff TST's facilities warehouse such that non-exempt employees are given so much work to complete that they regularly miss or take non-compliant meal periods. As a direct consequence of this understaffing, Plaintiff and Class members have so much work to complete within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Defendants failed to implement a meal period policy for work shifts longer than ten (10) hours or more.

29. Moreover, Defendants failed to implement adequate policies or procedures to provide meal periods to their non-exempt employees. Among other things, Defendants overworked Plaintiff and Class members and did not adequately advise them of their rights to take meal periods, and systematically denied them the opportunity to take meal periods, including

1 second meal periods during shifts of ten (10) hours or longer.

2 30. Defendants have also violated California Labor Code §§ 226.7, all applicable wage
3 orders and applicable sections, and the California Unfair Competition Law, Cal. Bus. & Prof.
4 Code §§ 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not
5 authorized and permitted to take a complete, timely, uninterrupted meal period, in accordance with
6 the applicable wage order, one additional hour of compensation at the proper regular rate of pay
7 for each workday that such a meal period was not authorized or permitted.

8 31. Defendants further violated California Labor Code sections 226.7, 510, 1194, 1197,
9 IWC Wage Order Nos. 1-2001, 4-2001 and all other applicable IWC Wage Orders, by failing to
10 compensate Plaintiff and Class members for all hours worked during their meal periods.

11 32. As a proximate result of the aforementioned violations, Plaintiff and Class
12 members have been damaged in an amount according to proof at trial, and seek all wages earned
13 and due, interest, penalties, expenses, and costs of suit.

14 **SECOND CAUSE OF ACTION**

15 **Failure to Provide Required Rest Breaks**

16 **[Cal. Lab. Code §§ 226.7, 512; and All Applicable IWC Wage Orders
and Applicable Sections]**

17 **(On Behalf of Plaintiff and the Class Against all Defendants)**

18 33. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 32.

20 34. At all times relevant herein, as part of Defendants' illegal policies and practices to
21 deprive their non-exempt employees of all wages earned and due, Defendants failed to permit
22 Plaintiff and Class members to take rest breaks as required under California Labor Code §§ 226.7
23 and 512, and § 12 of the applicable IWC Wage Orders.

24 35. As with meal periods, Defendants' policies and practices caused Plaintiff and Class
25 members to miss or otherwise take non-compliant rest periods by, among other things, giving
26 them unreasonable amounts of work that had to be completed within their shift such that rest
27 periods simply could not be taken. This was the result of systematic understaffing of TST's
28 facilities. Further, as set forth above, Defendants implemented skeletal staffing policies, which

1 resulted in the inability of Plaintiff and Class members to take compliant rest periods. In addition,
2 Defendants did not adequately notify Plaintiff and Class members of their rights to take rest
3 periods, and systematically denied them the opportunity to take rest periods, including all rest
4 periods required during long shifts, which at times exceeded 12 consecutive hours.

5 36. Defendants further violated California Labor Code § 226.7, IWC Wage Order Nos.
6 1-2001, 4-2001, § 12, all other applicable IWC Wage Orders and the California Unfair
7 Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to pay Plaintiff and Class
8 members who were not provided with a rest break, in accordance with the applicable wage order,
9 one additional hour of compensation at the proper regular rate of pay for each workday that a rest
10 break was not provided.

11 37. As a proximate result of the aforementioned violations, Plaintiff and Class
12 members have been damaged in an amount according to proof at trial, and seek all wages earned
13 and due, interest, penalties, expenses, and costs of suit.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Pay Overtime Wages**

16 **[Cal. Lab. Code §§ 510, 1194, 1198; and All Applicable IWC Wage Orders
and Applicable Sections]**

17 **(On Behalf of Plaintiff and the Class against all Defendants)**

18 38. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 37.

20 39. Pursuant to California Labor Code §§ 510, 1194, and all applicable wage orders
21 and applicable sections, Defendants are required to compensate Plaintiff and Class members for all
22 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
23 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
24 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
25 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
26 seventh consecutive day of work in any workweek.

27 40. Plaintiff and Class members are current and former non-exempt employees entitled
28 to the protections of California Labor Code §§ 510, 1194, and all applicable IWC Wage Orders.

1 During the statute of limitations period, Defendants failed to compensate Plaintiff and Class
2 members for all overtime hours worked as required under the foregoing provisions of the
3 California Labor Code and IWC Wage Order by, among other methods: failing to pay any
4 overtime compensation; failing to properly calculate the regular rate of pay for the purposes of
5 calculating overtime pay owed and due; requiring, permitting or suffering Plaintiff and Class
6 members to work off the clock; illegally rounding time so as to deprive Plaintiff and the Class
7 members of wages; requiring, suffering, or permitting Plaintiff and Class members to work
8 through meal and rest periods but not compensating them for this time, failing to include this time
9 in all hours worked; and other methods to be discovered.

10 41. In a short-sighted attempt to maximize profits, Defendants understaffed TST's
11 facilities. Not only has this practice resulted in widespread missed meal and rest breaks, but it has
12 also caused Plaintiff and Class members to perform significant amounts of work while off-the-
13 clock. Defendants know that Plaintiff and Class members perform this work off-the-clock work
14 because managers see them doing this work well before the beginning the start of their scheduled
15 shifts.

16 42. Defendants have also failed to pay required overtime wages based on its
17 implementation of an unlawful rounding practice wherein it rounds the time worked by non-
18 exempt employees up or down to the nearest quarter hour. This practice is unlawful because
19 Defendants record the actual time worked by Plaintiff and Class members—i.e., there is no
20 justifiable reason to round time and therefore fail to pay employees for the actual time that they
21 worked. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660 (“[i]f an employer,
22 as in this case, can capture and has captured the exact amount of time an employee has worked
23 during a shift, the employer must pay the employee for ‘all the time’ worked.”) (citations omitted).
24 This unlawful rounding practice has resulted in the systematic underpayment of overtime wages to
25 Plaintiff and Class members.

26 43. In violation of California law, Defendants have knowingly and willfully refused to
27 perform their obligations to compensate Plaintiff and Class members for all wages earned and all
28 hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class

1 members have suffered, and continue to suffer, substantial losses related to the use and enjoyment
2 of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
3 Defendants to fully perform their obligations under state law, all to their respective damages in
4 amounts according to proof at time of trial, and within the jurisdiction of this Court.

5 44. Defendants' conduct described herein violates California Labor Code §§ 510, 1194,
6 1198 and all applicable IWC Wage Orders and applicable sections. Therefore, pursuant to
7 California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under
8 the California Labor Code and IWC Wage Orders, Plaintiff and Class members are entitled to
9 recover the unpaid balance of wages owed to them by Defendants, plus interest, penalties,
10 attorneys' fees, expenses, and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **Failure to Pay Minimum Wages**

13 **[Cal. Lab. Code §§ 1194, 1197; All Applicable IWC Wage Orders and Applicable Sections]**
14 **(On Behalf of Plaintiff and the Class against all Defendants)**

15 45. Plaintiff incorporates herein by specific reference, as though fully set forth, the
16 allegations in paragraphs 1 through 44.

17 46. Pursuant to Cal. Lab. Code §§ 1194, 1197, and all applicable IWC Wage Orders
18 and applicable sections, payment to an employee of less than the applicable minimum wage for all
19 hours worked in a payroll period is unlawful.

20 47. During the statute of limitations period, the hourly rates for Plaintiff and Class
21 members were precisely at minimum wage. Based on this common practice, Defendants failed to
22 actually pay Plaintiff and Class members minimum wages for all hours worked by requiring,
23 permitting or suffering them to work off-the-clock, such as requiring them to work through meal,
24 rest breaks, but not compensating them for this time, and failing to include this time in all hours
25 worked, engaging in illegal and unlawful rounding practice, and other methods to be discovered.

26 48. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
27 all applicable IWC Wage Orders and applicable sections. As a proximate result of the
28 aforementioned violations, Plaintiff and other aggrieved employees have been damaged in an
amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203,

1 226, 558, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are
2 entitled to recover the unpaid balance of wages owed to them by Defendants, plus interest,
3 penalties, attorneys' fees, expenses, and costs of suit.

4 **FIFTH CAUSE OF ACTION**

5 **Failure to Pay Timely Wages**

6 **[Cal. Lab. Code §§ 204, 210]**

7 ***(On Behalf of Plaintiff and the Class against all Defendants)***

8 49. Plaintiff incorporates herein by specific reference, as though fully set forth, the
9 allegations in paragraphs 1 through 48.

10 50. Cal. Lab. Code § 204 provides that all wages earned by any person in any
11 employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages
12 due upon termination of an employee, are due and payable between the 16th and 26th day of the
13 month during which the labor was performed. Cal. Lab. Code § 204 further provides that all wages
14 earned by any person in any employment between the 16th and the last day, inclusive, of any
15 calendar month, other than those wages due upon termination of an employee, are due and payable
16 between the 1st and the 10th day of the following month. Cal. Lab. Code § 204 further provides that
17 all wages earned for labor in excess of the normal work period shall be paid no later than the payday
18 for the next regular payroll period.

19 51. At all times relevant herein, Defendants, among other things, willfully failed to pay
20 Plaintiff and Class members all wages earned and due to them, including, *inter alia*, meal period
21 and rest break premium payments, regular and overtime wages, and payment for work performed
22 off-the-clock, within any time period permissible under Cal. Lab. Code § 204.

23 52. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
24 Class members are entitled to all available statutory penalties, including civil penalties pursuant to
25 Cal. Lab. Code §§ 200, 210, 558, 1194, 1197.1, and other applicable provisions under the California
26 Labor Code and applicable IWC Wage Order(s), and an award of costs, expenses, and reasonable
27 attorneys' fees.

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SIXTH CAUSE OF ACTION
Failure to Pay All Wages Due to Discharged and Quitting Employees
[Cal. Lab. Code §§ 201, 202, 203]
(On Behalf of Plaintiff and the Class against all Defendants)

53. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 52.

54. Pursuant to California Labor Code §§ 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

55. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits his or her employment, unless the employee provided seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

56. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) workdays.

57. During the statute of limitations period, Defendants have willfully failed to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide Plaintiff and Class members with their final paychecks within the timeframes required under California law. In addition, because Defendants have failed and continue to fail to properly compensate Plaintiff and Class members for all hours worked when due, overtime wages, and compensation for non-compliant meal and rest breaks, Defendants have also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and Class members in accordance with California Labor Code §§ 201 and 202.

1 58. As a result, Plaintiff and Class members are entitled to all available statutory
2 penalties, including the waiting time penalties provided in California Labor Code § 203, together
3 with interest thereon, as well as other available remedies.

4 59. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
5 Class members have been deprived of compensation in an amount according to proof at the time
6 of trial, but in excess of the jurisdiction of this Court, and are entitled to recovery of such amounts,
7 plus interest thereon, and attorneys' fees and costs, pursuant to California Labor Code § 1194.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Itemized Wage Statements**

10 **[Cal. Lab. Code §§ 226; and All Applicable IWC Wage Orders and Applicable Sections]**
11 **(On Behalf of Plaintiff and the Class against all Defendants)**

12 60. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 59.

14 61. During the statute of limitations period, Defendants routinely failed to provide
15 Plaintiff and Class members with timely, accurate, and itemized wage statements in writing
16 showing each employee's gross wages earned, total hours worked, all deductions made, net wages
17 earned, and all applicable hourly rates in effect during each pay period and the corresponding
18 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and all
19 applicable IWC Wage Orders and applicable sections.

20 62. Defendants' pay stubs violate Labor Code § 226 on their face by, failing to list the
21 applicable rates of pay for regular and overtime hours worked by Plaintiff and aggrieved
22 employees. Further, Defendants were and are not providing Plaintiff and other aggrieved
23 employees with proper meal periods and rest breaks but intentionally fails to include in their wage
24 statements one (1) additional hour of compensation at their regular rates of pay for each non-
25 compliant meal period or rest break which include but not limited to, nondiscretionary bonuses,
26 etc., failing to pay all wages due based upon Defendants' illegal and unlawful rounding policy
27 which favored Defendants, and other methods yet to be discovery. These are violations of Labor
28 Code §226.

63. Defendants knowingly and intentionally failed to provide Plaintiff and Class members with timely, accurate, and itemized wage statements in accordance with California Labor Code § 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were being paid for, among other things, all of the hours they worked and at the proper rates of pay.

64. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and seek all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available penalties, including but not limited to penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

EIGHTH CAUSE OF ACTION
Failure to Maintain Required Records
[Cal. Lab. Code §§ 226, 1174; and All Applicable IWC Wage Orders
and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

65. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 64.

66. During the statute of limitations period, as part of Defendants' illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendants knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and all applicable IWC Wage Orders and applicable sections, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; and accurate itemized wage statements.

67. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to

1 California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and
2 reasonable attorneys' fees, including but not limited to those provided in California Labor Code §
3 226(e), as well as other available remedies.

4 **NINTH CAUSE OF ACTION**

5 **Failure to Indemnify Employees for Necessary Expenditures**
6 **[Cal. Lab. Code § 2802]**
7 **(On Behalf of Plaintiff and the Class Against all Defendants)**

8 68. Plaintiff incorporates herein by specific reference, as though fully
9 set forth, the allegations in paragraphs 1 through 67.

10 69. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
11 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
12 of his or her duties, or of his or her obedience to the directions of the employer.

13 70. During the Class period, and in violation of Cal. Lab. Code § 2802, Defendants
14 failed to indemnify Plaintiff and Class members for all business expenses and/or losses incurred in
15 direct consequence of the discharge of their duties, including but not limited to, expenses for
16 safety equipment and personal protective equipment during the COVID-19 pandemic and usage of
17 their personal cellular phones, but Defendants did not reimburse them for these expenses.

18 71. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
19 Class members have been damaged in an amount according to proof at trial, and seek
20 reimbursement of all necessary expenditures, plus interest thereon pursuant to Cal. Lab. Code
21 §2802(b). Additionally, Plaintiff and Class members are entitled to all available statutory penalties
22 and an award of costs, expenses, and reasonable attorneys' fees, including those provided in Cal.
23 Lab. Code § 2802(c), as well as other available remedies.

24 **TENTH CAUSE OF ACTION**

25 **Unfair and Unlawful Business Practices**
26 **[Cal. Bus. & Prof. Code § 17200 *et. seq.*]**
27 **(On Behalf of Plaintiff and the Class against all Defendants)**

28 72. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 71.

73. Each and every one of Defendants' acts and omissions in violation of the California

1 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited
2 to, Defendants' failure to provide required meal and rest breaks, failure to pay proper overtime
3 compensation, unlawful rounding and requiring off-the-clock work, failure to pay all wages due to
4 discharged or quitting employees or to pay timely wages, failure to furnish accurate itemized wage
5 statements or to maintain required records, failure to provide supplemental COVID-19 sick leave,
6 failure to provide suitable resting facilities, failure to maintain reasonable temperatures in the
7 workplace, and failure to provide for reasonable and necessary business expenditures, all
8 constitute an unfair and unlawful business practice under California Business and Professions
9 Code § 17200 *et seq.*

10 74. Defendants' violations of California wage and hour laws constitute a business
11 practice because the aforementioned acts and omissions were done repeatedly over a significant
12 period of time, and in a systematic manner, to the detriment of Plaintiff and Class members.

13 75. Among other practices, Defendants have avoided payment of wages, overtime
14 wages, the provision of meal and rest breaks, failing to provide for premium payments for
15 noncompliant meal and rest periods and other benefits as required by the California Labor Code,
16 the California Code of Regulations, and the applicable IWC Wage Orders.

17 76. As a result of these unfair and unlawful business practices, Defendants have reaped
18 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members,
19 and members of the public. Defendants should be made to disgorge their ill-gotten gains and to
20 restore them to Plaintiff and Class members.

21 77. Defendants' unfair and unlawful business practices entitle Plaintiff and Class
22 members to seek preliminary and permanent injunctive relief, including but not limited to orders
23 that Defendants account for, disgorge, and restore to Plaintiff and Class members the wages and
24 other compensation unlawfully withheld from them. Plaintiff and Class members are entitled to
25 restitution of all monies to be disgorged from Defendants in an amount according to proof at the
26 time of trial.

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28 ///

ELEVENTH CAUSE OF ACTION
Representative Action for Civil Penalties
[Cal. Lab. Code §§ 2698- 2699.5]
(On Behalf of Plaintiff and all Other Aggrieved Employees against all Defendants)

78. Plaintiff incorporates herein by specific reference as though fully set forth the allegations in paragraphs 1 through 77, with exception of the allegations in Paragraphs 22 through 24 (A)-(D).

79. Plaintiff is an "Aggrieved Employee" within the meaning of California Labor Code § 2699(c), and is a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendants and the alleged violations of the California Labor Code were committed against Plaintiff.

80. In addition to the foregoing violations of the California Labor Code and IWC Wage Order, Defendants also failed to provide supplemental COVID-19 sick leave. As of March 29, 2021, Employers employ 26 or more aggrieved employees. As such, Employers are required to provide 80 hours of COVID-19 supplemental paid sick leave and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay, taking into consideration non-discretionary bonuses, etc. See, California Labor Code §248.1(b)(3)(A). Employers have an obligation to provide COVID-19 supplemental sick leave in addition to regular sick leave. See, California Labor Code §248.1(b)(2)(D). Moreover, based upon the incorporation of California Labor Code §246 into California Labor Code §248.1(b)(2)(D), starting on March 29, 2021 or shortly thereafter, Employers are required to accurately reflect any offset and/or the current amount of COVID-19 supplemental sick leave available to the aggrieved employees. See, California Labor Code §248.1(b)(2)(D). Further, Employers are prohibited from requiring aggrieved employees from using any other paid or unpaid leave, paid time off, or vacation time provided by Employer before the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick leave. See, California Labor Code §248.1(b)(4). Defendants violated California Labor Code §§248.1, 248.2, 248.3 and 248.6 also for the reasons provided herein. Defendants failed to provide Plaintiff and

1 the other Aggrieved Employees with COVID-19 supplemental paid sick leave. Further,
2 Defendants failed to list and itemize COVID-19 supplemental paid sick leave on the wage
3 statements for the other Aggrieved Employees and also failed to pay the Aggrieved Employees
4 COVID-19 supplemental sick leave at their regular rate of pay. Defendants also failed to provide
5 the Aggrieved Employees of their rights under California law with regard to COVID-19
6 supplemental sick leave and hours relating thereto, and thus aggrieved employees were left in the
7 dark as to if or how much COVID-19 supplemental paid sick leave was available to them.

8 81. Defendants also failed to maintain reasonable temperatures in the work place.
9 Pursuant to IWC Wage Order No. 1-2001, § 15(A) and (B):

10 "The temperature maintained in each work area shall provide reasonable comfort
11 consistent with industry-wide standards for the nature of the process and the work
performed."

12 "If excessive heat or humidity is created by the work process, the employer shall
13 take all feasible means to reduce such excessive heat or humidity to a degree
14 providing reasonable comfort. ..."

15 82. Defendants also failed to maintain reasonable temperatures in the works areas where
16 Plaintiff and the other Aggrieved Employees during working days which were excessively hot.
17 Defendants should have taken all feasible measures to reduce the excessive heat but failed to do so.
18 Defendants failed to maintain the work area of TST's facilities to provide reasonable comfort and
19 avoid the exposure of the Aggrieved Employees to excessive heat according to industry standards
20 based upon the nature of the process and work performed.

21 83. Defendants further failed to provide suitable resting facilities at TST's facilities.
22 IWC Wage Order No. 1-2001, § 13(B) provides:

23 "Suitable resting facilities shall be provided in an area separate
24 from the toilet rooms and shall be available to employees during
25 work hours."

26 Defendants failed to provide suitable resting facilities for aggrieved employees to rest and take their
27 meal and rest periods during working hours.
28

84. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 1174.5, 1197.1, 1199, 1400 and IWC Wage Order No. 1-2001, § 20, from Defendants in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226, 226.7, 248.1, 248.2, 510, 512, 1174, 1194, 1197, 1198 and 2810.5. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

85. Pursuant to California Labor Code §§ 2699.3, on December 30, 2022, Plaintiff gave written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. Within sixty-five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative action under PAGA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them, as follows:

1. For compensatory damages in an amount to be ascertained at trial;
2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and all applicable IWC Wage Orders and applicable sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 250 West First Street, Suite 216, Claremont, California 91711.

On January 16, 2024, I served the foregoing documents, described as

FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

MAGARIAN & DIMERCURIO, APLC Attorneys for Defendant, *TST/Impresso, Inc.*
Mark D. Magarian, Esq.
Krista L. Dimercurio, Esq.
Tyler Porto, Esq.
20 Corporate Park, Suite 255
Irvine, California 92606
Telephone: 714-415-3412
Facsimile: 714-276-9944

MORLEY & MASON Attorneys for Defendant, *ASC Staffing Group, LLC*
Daniel Ban, Esq.
2600 W Geronimo Pl, Suite 100
Chandler, Arizona 85224-4996
Telephone: 480-320-1254
Facsimile: 480-505-0926

 X **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Claremont, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation postage meter date is more than one day after date of deposit for mailing in affidavit.

 X **(BY ELECTRONIC MAIL)** I sent such document via electronic mail to the electronic mail address(es) noted above.

 (BY EXPRESS SERVICE CARRIER) For each person whose name and address appears above or on the attached service list, by personally sealing a copy of each of the above documents in an envelope or package designated by the express service carrier (FEDEX) with delivery fees paid or provided for, addressed to the name and address for such person as shown above or on the attached service list. In the ordinary course of business of the Law Offices of Scott E. Wheeler the envelope or package will be delivered to a courier or driver authorized by the express carrier to receive documents or deposited in a box or other facility regularly maintained by the express service carrier for overnight delivery.

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X

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 16, 2024, at Claremont, California.


YOXANA CAUDILLO