

1 Michael Nourmand, Esq. (SBN 198439)
 2 James A. De Sario, Esq. (SBN 262552)
 3 **THE NOURMAND LAW FIRM, APC**
 4 8822 West Olympic Boulevard
 5 Beverly Hills, California 90211
 6 Telephone (310) 553-3600
 7 Facsimile (310) 553-3603

8 Attorneys for Plaintiffs,
 9 ALMA BALBUENA ESCALANTE, on behalf of herself
 10 and all others similarly situated

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

JUN 29 2023

SFB
 BY: Samantha Becerra, Deputy

11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

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

11 ALMA BALBUENA ESCALANTE, on
 12 behalf of herself and all others similarly
 13 situated

13 Plaintiffs,

14 v.

15 ROLF C. HAGEN (USA) CORP., a
 16 Massachusetts corporation; RANDSTAD US,
 17 LLC, a Delaware limited liability company;
 18 and DOES 1 through 100, Inclusive

18 Defendants.

CASE NO.: CIVSB2228305

FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES AND
 RESTITUTION

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

DEMAND FOR JURY TRIAL

1 COME NOW plaintiff ALMA BALBUENA ESCALANTE (hereinafter "ESCALANTE"
2 or "Plaintiff") on behalf of herself and all others similarly situated, and alleges as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to California Code of Civil Procedure §382, on
6 behalf of Plaintiff and all other current and former similarly situated employees employed by or
7 formerly employed by ROLF C. HAGEN (USA) CORP. ("ROLF") and RANDSTAD US, LLC
8 ("RANDSTAD") and any subsidiaries or affiliated companies (ROLF and RANDSTAD from time
9 to time will be referred to as "Defendants"), within the State of California.

10 2. For at least four (4) years prior to the filing of this action and through to the present
11 RANDSTAD has had a consistent policy of failing to pay wages, including overtime wages, on
12 multiple occasions to Plaintiff and other temporary non-exempt employees who were placed to
13 work at ROLF and for other employers in the State of California in violation of California state
14 wage and hour laws as a result of, including but not limited to, implementing a practice and/or
15 procedure that unevenly rounds time worked, thereby depriving employees of overtime and
16 minimum wage compensation.

17 3. For at least four (4) years prior to the filing of this action and through to the present
18 ROLF has had a consistent policy of failing to pay wages, including overtime wages, on multiple
19 occasions to Plaintiff and other direct hire non-exempt employees who work or worked at ROLF
20 in the State of California in violation of California state wage and hour laws as a result of,
21 including but not limited to, implementing a practice and/or procedure that unevenly rounds time
22 worked, thereby depriving employees of overtime and minimum wage compensation.

23 4. For at least four (4) years prior to the filing of this action and through to the present
24 RANDSTAD on multiple occasions have had a pattern and practice of failing to pay overtime
25 wages, to Plaintiff and other temporary non-exempt employees who were placed to work at ROLF
26 and for other employers in the State of California in violation of California state wage and hour
27 laws as a result of RANDSTAD's failure to include all forms of remuneration, including but not
28 limited to bonus pay, good attendance pay, in determining the regular rate of pay.

1 5. For at least four (4) years prior to the filing of this action and through to the present
2 ROLF on multiple occasions have had a pattern and practice of failing to pay overtime wages, to
3 Plaintiff and other direct hire non-exempt employees who work or worked at ROLF in the State of
4 California in violation of California state wage and hour laws as a result of ROLF's failure to
5 include all forms of remuneration, including but not limited to bonus pay, good attendance pay, in
6 determining the regular rate of pay.

7 6. For at least four (4) years prior to the filing of this action and continuing to the
8 present, RANDSTAD on multiple occasions has had a policy of failing to provide Plaintiff and
9 other temporary non-exempt employees who were placed to work at ROLF and for other
10 employers in the State of California a thirty (30) minute uninterrupted meal period for days on
11 which the employees worked more than five (5) hours in a workday and a second thirty (30)
12 minute uninterrupted meal periods for days on which the employees worked in excess of ten (10)
13 hours in a work day, and failing to provide compensation at the regular rate for such unprovided
14 meal periods as required by California wage and hour laws.

15 7. For at least four (4) years prior to the filing of this action and continuing to the
16 present, ROLF on multiple occasions has had a policy of failing to provide Plaintiff and other
17 direct hire non-exempt employees who work or worked at ROLF in the State of California a thirty
18 (30) minute uninterrupted meal period for days on which the employees worked more than five (5)
19 hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on which
20 the employees worked in excess of ten (10) hours in a work day, and failing to provide
21 compensation at the regular rate for such unprovided meal periods as required by California wage
22 and hour laws.

23 8. For at least for (4) years prior to the filing of this action and continuing to the
24 present, RANDSTAD on multiple occasions has had a policy of failing to provide Plaintiff and
25 other temporary non-exempt employees who were placed to work at ROLF and for other
26 employers in the State of California rest periods of at least ten (10) minutes per four (4) hours
27 worked or major fraction thereof and failing to provide compensation at the regular rate for such
28 unprovided rest periods as required by California wage and hour laws.

1 9. For at least for (4) years prior to the filing of this action and continuing to the
2 present, ROLF on multiple occasions has had a policy of failing to provide Plaintiff and other
3 direct hire non-exempt employees who work or worked at ROLF in the State of California rest
4 periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing
5 to provide compensation at the regular rate for such unprovided rest periods as required by
6 California wage and hour laws.

7 10. For at least for (4) years prior to the filing of this action and continuing through the
8 present, RANDSTAD on multiple occasions has failed to pay Plaintiff and other temporary non-
9 exempt employees who were placed to work at ROLF and for other employers in the State of
10 California, the full amount of their wages owed to them upon termination and/or resignation as
11 required by Labor Code §§ 201 or 202.

12 11. For at least for (4) years prior to the filing of this action and continuing through the
13 present, ROLF on multiple occasions has failed to pay Plaintiff and other direct hire non-exempt
14 employees who work or worked at ROLF in the State of California, the full amount of their wages
15 owed to them upon termination and/or resignation as required by Labor Code §§ 201 or 202.

16 12. Plaintiff, on behalf of herself and all other temporary non-exempt employees who
17 work or worked for RANDSTAD and direct hire non-exempt employees who work or worked for
18 ROLF in the State of California, brings this action pursuant to, including but not limited to,
19 California Labor Code §§ 200, 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2698 et
20 seq., all applicable Industrial Welfare Commission Wage Orders, and California Code of
21 Regulations, Title 8, §11070, seeking overtime wages, minimum wages, premium wages for
22 missed meal and rest periods, penalties, and reasonable attorney's fees and costs.

23 13. Plaintiff, on behalf of herself and all other temporary non-exempt employees who
24 work or worked for ROLF and direct hire non-exempt employees who work or worked for ROLF
25 in the State of California, pursuant to California Business & Professions Code §§17200-17208
26 also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and
27 members of the class are entitled.

28 ///

1 **PARTIES**

2 **A. Plaintiffs**

3 14. Venue as to each defendant is proper in this judicial district, pursuant to California
4 Code of Civil Procedure §395. Defendants operate and do business in San Bernardino County,
5 California, and each defendant is within the jurisdiction of this court for service of process
6 purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
7 situated within San Bernardino County and the State of California. Defendants employ numerous
8 class members in San Bernardino County and the State of California.

9 15. Plaintiff, ESCALANTE, is a resident of the State of California. At all relevant
10 times herein, she was employed as a temporary non-exempt employee for RANDSTAD from 2018
11 and assigned to work at ROLF and was paid by RANDSTAD until her assignment ended with
12 ROLF. Plaintiff is informed and believes, that in 2019, ROLF was no longer paying RANDSTAD
13 for services she rendered to ROLF and as a result, the client relationship between ROLF and
14 RANDSTAD, as to Plaintiff, was extinguished. Thereafter, in 2019 Plaintiff was employed as a
15 direct hire non-exempt employee for ROLF and was being paid directly by ROLF and had to sign
16 new employee hire documents with ROLF.

17 **B. Defendants**

18 16. Defendant, ROLF C. HAGEN (USA) CORP., a Massachusetts corporation,
19 is a manufacturer and distributor of pet products. Defendants employed Plaintiff, as a temporary
20 non-exempt employee from in or about 2018 to 2019. Thereafter, ROLF employed Plaintiff, as a
21 direct hire non-exempt employee from in on or about 2019 until her employment was terminated
22 in 2022.

23 17. Defendant, RANDSTAD US, LLC, a Delaware limited liability company,
24 provides temporary employment services to contracting companies. Defendants employed
25 Plaintiff, as a temporary non-exempt employee and was placed to work at ROLF from in or about
26 2018 to 2019 when her assignment ended at ROLF thereby, Plaintiff is informed and believes, that
27 the client relationship between RANDSTAD and ROLF, as to Plaintiff, ended in or about 2019.

28 ///

1 18. Plaintiff is informed and believes that defendants ROLF and RANDSTAD are joint
2 employers in that they both employed Plaintiff and similarly situated temporary non-exempt
3 employees who were placed to work at ROLF, at the same time and were operating as a joint
4 enterprise during the time period that Plaintiff was placed by RANDSTAD, as a temporary non-
5 exempt employee, at ROLF until her assignment ended at ROLF. The joint employer allegations
6 only apply to the temporary non-exempt employees who were placed by RANDSTAD to work at
7 ROLF. That is, the joint employer allegations are severed once the temporary non-exempt
8 employees assignment ended at ROLF since, Plaintiff is informed and believes, that the client
9 relationship between ROLF and RANDSTAD ended, as to Plaintiff and similarly situated
10 temporary non-exempt employees, once the temporary non-exempt employees assignment ended
11 at ROLF.

12 19. Labor Code §2810.3(1)(A) and (3) defines, “client employer” as a business entity,
13 regardless of its form, that obtains or is provided workers to perform labor within its usual course
14 of business from a labor contractor; “labor contractor” means an individual or entity that supplies,
15 either with or without a contract, a client employer with workers to perform labor within the
16 client’s employer’s usual course of business. ROLF was the “client employer” during the period
17 of time that RANDSTAD placed Plaintiff and similarly situated temporary non-exempt employees
18 to work at ROLF and RANDSTAD was the “labor contractor.” Plaintiff is informed and believes
19 that once her assignment as a temporary non-exempt employee at ROLF ended, the client
20 relationship between ROLF and RANDSTAD, as to Plaintiff, ended as well.

21 20. Labor Code §2810.3(b) provides that a client employer shall share with a labor
22 contractor all civil legal responsibility and civil liability for all workers supplied by the labor
23 contractor for the payment of wages. Subsection (4) defines “wages” to have the same meaning
24 provided by Labor Code §200 and all sums payable to an employee or the state based upon any
25 failure to pay wages, as provided by law. ROLF as the “client employer” is a joint employer and
26 shares with RANDSTAD as the “labor contractor” all civil legal responsibility and civil liability
27 for all temporary non-exempt employees, supplied by RANDSTAD to ROLF, for all the payment
28 of wages. That is, ROLF and RANDSTAD are joint employers of the temporary non-exempt

1 employees placed by RANDSTAD to work at ROLF. However, once the temporary non-exempt
2 employees' assignment at ROLF ends, Plaintiff is informed and believes, that the client
3 relationship and joint employer responsibilities end between ROLF and RANDSTAD as to those
4 temporary non-exempt employees whose assignment at ROLF ends.

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

12 **FACTUAL BACKGROUND**

13 22. Plaintiff and other similarly situated temporary non-exempt employees and direct
14 hire non-exempt employees have not been paid, on multiple occasions, during the relevant liability
15 periods all wages, including overtime wages, as a result of, including but not limited to,
16 implementing a practice and/or procedure that unevenly rounds time worked.

17 23. Plaintiff and other similarly situated temporary non-exempt employees and direct
18 hire non-exempt employees have not been paid, on multiple occasions, during the relevant liability
19 periods overtime wages, as a result of, failing to include all forms of remuneration, including but
20 not limited to bonus pay, and good attendance pay in determining the regular rate of pay.

21 24. RANDSTAD, on multiple occasions, has had a policy of failing to provide Plaintiff
22 and other temporary non-exempt employees who were placed to work at ROLF and for other
23 employers in the State of California a thirty (30) minute uninterrupted meal period for days on
24 which the employees worked more than five (5) hours in a workday and a second thirty (30) minute
25 uninterrupted meal periods for days on which the employees worked in excess of ten (10) hours in a
26 work day, and failing to provide compensation for such unprovided meal periods.

27 ///

28 ///

1 25. ROLF, on multiple occasions, has had a policy of failing to provide Plaintiff and
2 other direct hire non-exempt employees who work or worked at ROLF in the State of California a
3 thirty (30) minute uninterrupted meal period for days on which the employees worked more than
4 five (5) hours in a workday and a second thirty (30) minute uninterrupted meal periods for days on
5 which the employees worked in excess of ten (10) hours in a work day, and failing to provide
6 compensation for such unprovided meal periods.

7 26. RANDSTAD, on multiple occasions, has had a policy of failing to provide Plaintiff
8 and other temporary non-exempt employees who were placed to work at ROLF and for other
9 employers in the State of California rest periods of at least ten (10) minutes per four (4) hours
10 worked or major fraction thereof and failing to provide compensation for such unprovided rest
11 periods as required by California wage and hour laws.

12 27. ROLF, on multiple occasions, has had a policy of failing to provide Plaintiff and
13 other direct hire non-exempt employees who work or worked at ROLF in the State of California
14 rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and
15 failing to provide compensation for such unprovided rest periods as required by California wage
16 and hour laws.

17 28. RANDSTAD has failed to comply with Labor Code §226(a) by not providing
18 Plaintiff and other temporary non-exempt employees who were placed work at ROLF and for other
19 employers in the State of California itemized wage statements accurately showing, including but
20 not limited to, total hours worked during the pay period and pay due and owing for meal and rest
21 break law violations.

22 29. ROLF has failed to comply with Labor Code §226(a) by not providing Plaintiff and
23 other direct hire non-exempt employees who work or worked at AMADA in the State of California
24 itemized wage statements accurately showing, including but not limited to, total hours worked
25 during the pay period and pay due and owing for meal and rest break law violations.

26 30. At the time Plaintiff's employment and the employment of other former temporary
27 non-exempt employees of RANDSTAD who were placed to work at ROLF and for other employers
28 in the State of California, ended, RANDSTAD willfully failed to pay minimum and overtime

1 wages and one hour of wages at the regular rate in lieu of each unprovided meal and rest period.

2 31. At the time Plaintiff's employment and the employment of other direct hire non-
3 exempt employees of ROLF in the State of California, ended, ROLF willfully failed to pay
4 minimum and overtime wages and one hour of wages at the regular rate in lieu of each unprovided
5 meal and rest period.

6 **CLASS ACTION ALLEGATIONS**

7 32. Plaintiff brings this action on behalf of herself, and all others similarly situated
8 temporary non-exempt employee and direct hire non-exempt employee, as a class action pursuant
9 to California Code of Civil Procedure §382. Plaintiff seeks to represent ten Classes composed of
10 and defined as follows:

11 **Temporary Non-Exempt Employee Class**

12 All current and former temporary non-exempt employees of RANDSTAD placed to
13 work at ROLF and for other employees within the State of California at any time
14 commencing four (4) years preceding the filing of Plaintiff's complaint up until the
time that notice of the class action is provided to the class (collectively referred to
as "Temporary Non-Exempt Employee Class").

15 **Direct Hire Non-Exempt Employee Class**

16 All current and former direct hire non-exempt employees of ROLF within the State
17 of California at any time commencing four (4) years preceding the filing of
18 Plaintiff's complaint up until the time that notice of the class action is provided to
the class (collectively referred to as "Direct Hire Non-Exempt Employee Class").

19 **Meal Period Temporary Non-Exempt Employee Class**

20 All current and former Temporary Non-Exempt Employees of RANDSTAD placed
21 to work at ROLF and for other employers within the State of California at any time
22 commencing four (4) years preceding the filing of Plaintiff's complaint up until the
time that notice of the class action is provided to the class, who worked shifts of 5
hours or more (collectively referred to as "Meal Period Temporary Non-Exempt
Employee Class").

23 **Meal Period Direct Hire Non-Exempt Employee Class**

24 All current and former Direct Hire Non-Exempt Employees of ROLF within the
25 State of California at any time commencing four (4) years preceding the filing of
26 Plaintiff's complaint up until the time that notice of the class action is provided to
the class, who worked shifts of 5 hours or more (collectively referred to as "Meal
Period Direct Hire Non-Exempt Employee Class").

27 **Rest Period Temporary Non-Exempt Employee Class**

28 All current and former Temporary Non-Exempt Employee of RANDSTAD placed
to work at ROLF and for other employers within the State of California at any time

commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 4 hours or more (collectively referred to as "Rest Period Temporary Non-Exempt Employee Class").

Rest Period Direct Hire Non-Exempt Employee Class

All current and former Direct Hire Non-Exempt Employee of ROLF within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, who worked shifts of 4 hours or more (collectively referred to as "Rest Period Direct Hire Non-Exempt Employee Class").

Wage Statement Temporary Non-Exempt Employee Class

All current and former Temporary Non-Exempt Employee of RANDSTAD placed to work at ROLF and for other employers within the State of California, to whom, at any time commencing one (1) year preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as "Wage Statement Temporary Non-Exempt Employee Class").

Wage Statement Direct Hire Non-Exempt Employee Class

All current and former Direct Hire Non-Exempt Employee of ROLF within the State of California, to whom, at any time commencing one (1) year preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class, were provided with wage statements (collectively referred to as "Wage Statement Direct Hire Non-Exempt Employee Class").

Late Pay Temporary Non-Exempt Employee Class

All former Temporary Non-Exempt Employee of RANDSTAD placed to work at ROLF and for other employers within the State of California at any time commencing three (3) years preceding the filing of Plaintiff's complaint up until the 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 Temporary Non-Exempt Employee Class").

Late Pay Direct Hire Non-Exempt Employee Class

All former Direct Hire Non-Exempt Employee of ROLF within the State of California at any time commencing three (3) years preceding the filing of Plaintiff's complaint up until the 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 Direct Hire Non-Exempt Employee Class").

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

///

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

4 **A. Numerosity**

5 35. The potential members of the Class as defined are so numerous that joinder of all
6 the members of the Class is impracticable. While the precise number of Class Members has not
7 been determined at this time, Plaintiff is informed and believes that there are at least fifty
8 Temporary Non-Exempt Employee Class members employed by RANDSTAD within the State of
9 California and at least fifty Direct Hire Non-Exempt Employee Class members employed by ROLF
10 within the State of California.

11 36. Accounting for employee turnover during the relevant periods necessarily increases
12 this number substantially. Plaintiff alleges RANDSTAD's employment records would provide
13 information as to the number and location of all Temporary Non-Exempt Employee Class members
14 and ROLF's employment records would provide information as to the number and location of all
15 Direct Hire Non-Exempt Employee Class members. Joinder of all members of the proposed Class
16 is not practicable.

17 **B. Commonality**

18 37. There are questions of law and fact common to Class Members. These common
19 questions include, but are not limited to:

- 20 (1) Did RANDSTAD violate Labor Code §1194 by not compensating
21 Temporary Non-Exempt Employee Class members overtime wages?
22 (2) Did ROLF violate Labor Code §1194 by not compensating Direct Hire Non-
23 Exempt Employee Class members overtime wages?
24 (3) Did RANDSTAD violate Labor Code §§ 1194 and 1197 by not paying
25 Temporary Non-Exempt Employee Class members minimum wages for all
26 hours worked?
27 (4) Did ROLF violate Labor Code §§ 1194 and 1197 by not paying Direct Hire
28 Non-Exempt Employee Class members minimum wages for all hours

1 worked?

2 (5) Did RANDSTAD violate Labor Code § 512 by not providing Temporary
3 Non-Exempt Employee Class members with meal periods?

4 (6) Did ROLF violate Labor Code § 512 by not providing Direct Hire Non-
5 Exempt Employee Class members with meal periods?

6 (7) Did RANDSTAD violate Labor Code § 226.7 by not providing Temporary
7 Non-Exempt Employee Class members additional wages at the regular rate
8 for missed or interrupted meal periods?

9 (8) Did ROLF violate Labor Code § 226.7 by not providing Direct Hire Non-
10 Exempt Employee Class members additional wages at the regular rate for
11 missed or interrupted meal periods?

12 (9) Did RANDSTAD violate Labor Code §226.7 by not providing Temporary
13 Non-Exempt Employee Class members additional wages at the regular rate
14 for missed rest periods?

15 (10) Did ROLF violate Labor Code §226.7 by not providing Direct Hire Non-
16 Exempt Employee Class members additional wages at the regular rate for
17 missed rest periods?

18 (11) Is RANDSTAD liable to Temporary Non-Exempt Employee Class members
19 for penalty wages under Labor Code § 203?

20 (12) Is ROLF liable to Direct Hire Non-Exempt Employee Class members for
21 penalty wages under Labor Code § 203?

22 (13) Did RANDSTAD violate Labor Code § 226(a) by not furnishing Temporary
23 Non-Exempt Employee Class members with accurate wage statements?

24 (14) Did ROLF violate Labor Code § 226(a) by not furnishing Direct Hire Non-
25 Exempt Employee Class members with accurate wage statements?

26 (15) Did RANDSTAD violate Labor Code §§ 201 and 202 by failing to pay
27 Temporary Non-Exempt Employee Class members upon termination or
28 resignation all wages earned?

1 (16) Did ROLF violate Labor Code §§ 201 and 202 by failing to pay Direct Non-
2 Exempt Employee Class members upon termination or resignation all wages
3 earned?

4 (17) Did Defendants violate the Unfair Competition Law, Business and
5 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
6 herein?

7 (18) Are Temporary Non-Exempt Employee Class and Direct Hire Non-Exempt
8 Employee Class entitled to restitution of penalty wages under Business and
9 Professions Code § 17203?

10 (19) Are Class Members entitled to attorney's fees?

11 (20) Are Class Members entitled to interest?

12 **C. Typicality**

13 38. The claims of Plaintiff herein alleged are typical of those claims which could be
14 alleged by Temporary Non-Exempt Employee Class and the relief sought is typical of the relief
15 which would be sought by each of the members of the classes in separate actions. Plaintiff and all
16 members of the Temporary Non-Exempt Employee Class sustained injuries and damages arising
17 out of and caused by Defendants' common course of conduct in violation of laws and regulations
18 that have the force and effect of law and statutes as alleged herein.

19 39. The claims of Plaintiff herein alleged are typical of those claims which could be
20 alleged by Direct Hire Non-Exempt Employee Class and the relief sought is typical of the relief
21 which would be sought by each of the members of the classes in separate actions. Plaintiff and all
22 members of the Direct Hire Non-Exempt Employee Class sustained injuries and damages arising
23 out of and caused by ROLF's common course of conduct in violation of laws and regulations that
24 have the force and effect of law and statutes as alleged herein.

25 **D. Adequacy of Representation**

26 40. Plaintiff will fairly and adequately represent and protect the interests of the
27 members of the classes. Counsel who represent Plaintiff are competent and experienced in
28 litigating wage and hour class actions.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

11
12
13
14
15
16
17
18

19
20
21
22

23

24

25

24

25

25

26

27

28 ||

1 45. At all times relevant to this complaint, California Labor Code §510 was in effect
2 and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
3 in one workday and any work in excess of forty hours in any one workweek . . . shall be
4 compensated at the rate of no less than one and one-half times the regular rate of pay for an
5 employee.”

6 46. Overtime pay is computed based on the regular rate of pay. The regular rate
7 of pay includes many different kinds of remuneration. Under California law, the determination of
8 regular rate of pay for purposes of determining overtime pay must include the employee’s
9 commissions, bonuses, or other non-hourly compensation.

10 47. At all times herein mentioned, Plaintiff and the Temporary Non-Exempt Employee
11 Class worked for Defendants during shifts that consisted of more than eight hours in a work day
12 and/or more than forty hours in a work week and were not paid overtime wages for all hours
13 worked as a result of, including but not limited to, Defendants’ practice and/or procedure of
14 unevenly rounding time worked and failing to properly calculate the regular rate of pay for
15 purposes of payment of overtime wages when employees earned other forms of remuneration, such
16 as bonuses, during the same pay period when he/she worked overtime.

17 48. At all times herein mentioned, Plaintiff and the Direct Hire Non-Exempt Employee
18 Class worked for ROLF during shifts that consisted of more than eight hours in a work day and/or
19 more than forty hours in a work week and were not paid overtime wages for all hours worked as a
20 result of, including but not limited to, ROLF’s practice and/or procedure of unevenly rounding time
21 worked and failing to properly calculate the regular rate of pay for purposes of payment of overtime
22 wages when employees earned other forms of remuneration, such as bonuses, during the same pay
23 period when he/she worked overtime.

24 49. Accordingly, by requiring Plaintiff and Temporary Non-Exempt Employee Class to
25 work in excess of eight hours per day and/or forty hours per week and without properly
26 compensating overtime wages, as described above, Defendants willfully violated the provisions of
27 Labor Code §1194.

28 ///

1 50. Accordingly, by requiring Plaintiff and Direct Hire Non-Exempt Employee Class to
2 work in excess of eight hours per day and/or forty hours per week and without properly
3 compensating overtime wages, as described above, ROLF willfully violated the provisions of Labor
4 Code §1194.

5 51. As a result of the unlawful acts of Defendants, Plaintiff and the Temporary Non-
6 Exempt Employee Class have been deprived of overtime wages in an amounts to be determined at
7 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's
8 fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and
9 Civil Code §3287.

10 52. As a result of the unlawful acts of ROLF, Plaintiff and the Direct Hire Non-
11 Exempt Employee Class have been deprived of overtime wages in an amounts to be determined at
12 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney's
13 fees, and costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and
14 Civil Code §3287.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the Class Against All Defendants)

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

20 54. At all relevant times, Plaintiff and the members of the Temporary Non-Exempt
21 Employee Class were employees of Defendants covered by Labor Code §1197 and applicable
22 Wage Orders.

23 55. At all relevant times, Plaintiff and the members of the Direct Hire Non-Exempt
24 Employee Class were employees of ROLF covered by Labor Code §1197 and applicable Wage
25 Orders.

26 56. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
27 members of the Temporary Non-Exempt Employee Class and Direct Hire Non-Exempt Employee
28 Class were entitled to receive minimum wages for all hours worked.

57. As a result of Defendants' unlawful conduct, including but not limited to improperly rounding time worked, Defendants failed to pay Plaintiff and members of the Temporary Non-Exempt Employee Class minimum wages for all hours worked in violation of Labor Code §1197 and applicable Wage Orders. As a result of Defendants' unlawful conduct, Plaintiff and members of the Temporary Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked.

7 58. As a result of ROLF's unlawful conduct, including but not limited to improperly
8 rounding time worked, ROLF failed to pay Plaintiff and members of the Direct Hire Non-Exempt
9 Employee Class minimum wages for all hours worked in violation of Labor Code §1197 and
10 applicable Wage Orders. As a result of ROLF's unlawful conduct, Plaintiff and members of the
11 Direct Hire Non-Exempt Employee Class have suffered damages in an amount, subject to proof, to
12 the extent they were not paid minimum wages for all hours worked.

13 59. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the
14 Temporary Non-Exempt Employee Class and Direct Hire Non-Exempt Employee Class are entitled
15 to recover the full amount of unpaid minimum wages, prejudgment interest, liquidated damages,
16 reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(By Plaintiff and the Class Against All Defendants)

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

61. Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Plaintiff and other members of the Meal Period Temporary Non-Exempt Employee Class and Meal Period Direct Hire Non-Exempt Employee Class were not provided with

1 requisite meal periods as contemplated under the law.

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

6 63. By their failure to provide Plaintiff and members of the Meal Period Temporary
7 Non-Exempt Employee Class with the meal periods contemplated by California law, and failing to
8 provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
9 violated the provisions of Labor Code §512 and applicable Wage Orders.

10 64. By its failure to provide Plaintiff and members of the Meal Period Direct Hire Non-
11 Exempt Employee Class with the meal periods contemplated by California law, and failing to
12 provide compensation for such unprovided meal periods, as alleged above, ROLF willfully violated
13 the provisions of Labor Code §512 and applicable Wage Orders.

14 65. As a result of Defendants' unlawful conduct Plaintiff and the other members of the
15 Meal Period Temporary Non-Exempt Employee Class have suffered damages in an amount, subject
16 to proof, to the extent they were not paid additional pay owed for missed meal periods.

17 66. As a result of ROLF's unlawful conduct Plaintiff and the other members of the
18 Meal Period Direct Hire Non-Exempt Employee Class have suffered damages in an amount,
19 subject to proof, to the extent they were not paid additional pay owed for missed meal periods.

20 67. Plaintiff and the other members of the Meal Period Temporary Non-Exempt
21 Employee Class and Meal Period Direct Hire Non-Exempt Employee Class are entitled to recover
22 the full amount of their unpaid additional pay for missed meal periods. Pursuant to Code of Civil
23 Procedure §1021.5, Plaintiff and the other members of the Meal Period Temporary Non-Exempt
24 Employee Class and Meal Period Direct Hire Non-Exempt Employee Class are entitled to recover
25 reasonable attorney's fees and costs of suit.

26 68. Pursuant to Civil Code § 3287(a), Plaintiff and other members of the Meal Period
27 Temporary Non-Exempt Employee Class and Meal Period Direct Hire Non-Exempt Employee
28 Class are entitled to recover prejudgment interest on the additional pay owed for missed meal

1 periods.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

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

20 72. By their failure to provide Plaintiff and other members of the Rest Period
21 Temporary Non-Exempt Employee Class with the rest periods contemplated by California law, and
22 failing to provide compensation for such unprovided rest periods, as alleged above, Defendants
23 willfully violated the provisions of Labor Code §226.7 and applicable Wage Orders.

24 73. By its failure to provide Plaintiff and other members of the Rest Period Direct Hire
25 Non-Exempt Employee Class with the rest periods contemplated by California law, and failing to
26 provide compensation for such unprovided rest periods, as alleged above, ROLF willfully violated
27 the provisions of Labor Code §226.7 and applicable Wage Orders.

28 ///

1 Employee Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
2 accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly
3 rates in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee.

5 82. Defendants failed to provide Plaintiff and the other members of the Wage
6 Statement Temporary Non-Exempt Employee Class accurate itemized wage statements in
7 accordance with Labor Code § 226(a).

8 83. ROLF failed to provide Plaintiff and the other members of the Wage Statement
9 Direct Hire Non-Exempt Employee Class accurate itemized wage statements in accordance with
10 Labor Code § 226(a).

11 84. Plaintiff and the other members of the Wage Statement Temporary Non-Exempt
12 Employee Class are informed and believe and thereon allege that at all relevant times, Defendants
13 maintained and continue to maintain a policy and practice of issuing wage statements that do not
14 show, including but not limited to, pay due and owing for meal and rest break law violations and
15 payment and hours worked that were not paid. Defendants' practices resulted and continue to
16 result in, the issuance of wage statements to Plaintiff and other members of the Wage Statement
17 Temporary Non-Exempt Employee Class that do not comply with the itemization requirements.

18 85. Plaintiff and the other members of the Wage Statement Direct Hire Non-Exempt
19 Employee Class are informed and believe and thereon allege that at all relevant times, ROLF
20 maintained and continue to maintain a policy and practice of issuing wage statements that do not
21 show, including but not limited to, pay due and owing for meal and rest break law violations and
22 payment and hours worked that were not paid. ROLF's practices resulted and continue to result in,
23 the issuance of wage statements to Plaintiff and other members of the Wage Statement Direct Hire
24 Non-Exempt Employee Class that do not comply with the itemization requirements.

25 86. Defendants' failure to provide Plaintiff and other members of the Wage Statement
26 Temporary Non-Exempt Employee Class with accurate wage statements was knowing and
27 intentional. Defendants had the ability to provide Plaintiff and the other members of the Wage
28 Statement Temporary Non-Exempt Employee Class with accurate wage statements, but

1 intentionally provided wage statements that Defendants knew were not accurate.

2 87. ROLF's failure to provide Plaintiff and other members of the Wage Statement
3 Direct Hire Non-Exempt Employee Class with accurate wage statements was knowing and
4 intentional. ROLF had the ability to provide Plaintiff and the other members of the Wage
5 Statement Direct Hire Non-Exempt Employee Class with accurate wage statements, but
6 intentionally provided wage statements that ROLF knew was not accurate.

7 88. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
8 Wage Statement Temporary Non-Exempt Employee Class have suffered injury. The absence of
9 accurate information on their wage statements has delayed timely challenge to Defendants'
10 unlawful pay practices, requires discovery and mathematical computations to determine the amount
11 of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records,
12 and led to submission of inaccurate information about wages and amounts deducted from wages to
13 state and federal government agencies.

14 89. As a result of ROLF's unlawful conduct, Plaintiff and the other members of the
15 Wage Statement Direct Hire Non-Exempt Employee Class have suffered injury. The absence of
16 accurate information on their wage statements has delayed timely challenge to ROLF's unlawful
17 pay practices, requires discovery and mathematical computations to determine the amount of wages
18 owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to
19 submission of inaccurate information about wages and amounts deducted from wages to state and
20 federal government agencies.

21 90. Pursuant to Labor Code § 226(e) Plaintiff and other members of the Wage
22 Statement Temporary Non-Exempt Employee Class and Wage Statement Direct Hire Non-Exempt
23 Employee Class are entitled to recover \$50 for the initial pay period during the period in which
24 violation of Labor Code § 226 occurred and \$100 for each violation of Labor Code § 226 in a
25 subsequent pay period, not to exceed an aggregate penalty of \$4,000 per employee.

26 91. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
27 the Wage Statement Temporary Non-Exempt Employee Class and Wage Statement Direct Hire
28 Non-Exempt Employee Class were entitled to recover the full amount of penalties due under Labor

1 Code § 226(e) reasonable attorney's fees and costs of suit.

2 **SIXTH CAUSE OF ACTION**

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

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

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

7 93. At all relevant times, Plaintiff and other members of the Late Pay Temporary Non-
8 Exempt Employee Class were employees of Defendants covered by Labor Code §§ 201 and 202.

9 94. At all relevant times, Plaintiff and other members of the Late Pay Direct Hire Non-
10 Exempt Employee Class were employees of ROLF covered by Labor Code §§ 201 and 202.

11 95. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
12 Temporary Non-Exempt Employee Class and Late Pay Direct Hire Non-Exempt Employee Class
13 were entitled upon termination to timely payment of all wages earned and unpaid prior to
14 termination. Discharged employers were entitled to payment of all wages earned and unpaid prior
15 to discharge immediately upon termination. Employees who resigned were entitled to payment of
16 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
17 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
18 unpaid at the time of resignation.

19 96. Defendants failed to pay Plaintiff and other members of the Late Pay Temporary
20 Non-Exempt Employee Class all wages earned and unpaid prior to termination in accordance with
21 Labor Code §§ 201 or 202. Plaintiff and other members of the Late Pay Temporary Non-Exempt
22 Employee Class are informed and believe and thereon allege that at all relevant times within the
23 applicable limitations period, Defendants had a practice of not paying upon termination, the wages
24 owed to them as a consequence of overtime and minimum wages and meal and rest period
25 violations.

26 97. ROLF failed to pay Plaintiff and other members of the Late Pay Direct Hire
27 Non-Exempt Employee Class all wages earned and unpaid prior to termination in accordance with
28 Labor Code §§ 201 or 202. Plaintiff and other members of the Late Pay Direct Hire Non-Exempt

1 Employee Class are informed and believe and thereon allege that at all relevant times within the
2 applicable limitations period, ROLF had a practice of not paying upon termination, the wages owed
3 to them as a consequence of overtime and minimum wages and meal and rest period violations.

4 98. Defendants' failure to pay Plaintiff and members of the Late Pay Temporary Non-
5 Exempt Employee Class all wages earned prior to termination in accordance with Labor Code §§
6 201 and 202 was wilful. Defendants had the ability to pay all wages earned by Plaintiff and other
7 members of the Late Pay Temporary Non-Exempt Employee Class at the time of termination in
8 accordance with Labor Code §§ 201 and 202, but intentionally adopted policies or practices
9 incompatible with the requirements of Labor Code §§ 201 and 202.

10 99. ROLF's failure to pay Plaintiff and members of the Late Pay Direct Hire Non-
11 Exempt Employee Class all wages earned prior to termination in accordance with Labor Code §§
12 201 and 202 was wilful. ROLF had the ability to pay all wages earned by Plaintiff and other
13 members of the Late Pay Direct Hire Non-Exempt Employee Class at the time of termination in
14 accordance with Labor Code §§ 201 and 202, but intentionally adopted policies or practices
15 incompatible with the requirements of Labor Code §§ 201 and 202.

16 100. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late
17 Pay Temporary Non-Exempt Employee Class are entitled to all wages earned prior to termination
18 that Defendants failed to pay them.

19 101. Pursuant to Labor Code §§ 201 and 202 Plaintiff and other members of the Late
20 Pay Direct Hire Non-Exempt Employee Class are entitled to all wages earned prior to termination
21 that ROLF failed to pay them.

22 102. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay
23 Temporary Non-Exempt Employee Class and Late Pay Direct Hire Non-Exempt Employee Class
24 are entitled to penalty wages from the date their earned and unpaid wages were due, upon
25 termination, until paid, up to a maximum of 30 days.

26 101. As a result of Defendants' unlawful conduct Plaintiff and other members of the
27 Late Pay Temporary Non-Exempt Employee Class have suffered damages in an amount subject to
28 proof, to the extent they were not paid for all wages earned prior to termination.

102. As a result of ROLF's unlawful conduct Plaintiff and other members of the Late Pay Direct Hire Non-Exempt Employee Class have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination.

103. As a result of Defendants' unlawful conduct Plaintiff and the other members of the Late Pay Temporary Non-Exempt Employee 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.

104. As a result of ROLF's unlawful conduct Plaintiff and the other members of the Late Pay Direct Hire Non-Exempt Employee 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.

105. Pursuant to Labor Code §§ 218 and 218.5, Plaintiff and the other members of the Late Pay Temporary Non-Exempt Employee Class and Late Pay Direct Hire Non-Exempt Employee 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 Temporary Non-Exempt Employee Class and Late Pay Direct Hire Non-Exempt Employee Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid penalty wages.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(By Plaintiff and the Class Against All Defendants)

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

107. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business & Professions Code § 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the state of California that comply with their obligations to pay overtime and minimum wages, provide meal and rest periods or compensation in lieu thereof, wages lost as a result of deductions of unavoidable fees, provide accurate wage statements, and compensate employees all wages upon termination.

1 pursuant to the procedures specified in Labor Code §2699.3.

2 114. Plaintiff has complied with the procedures for bringing suit specified in Labor
3 Code §2699.3. On or about December 14, 2022, Plaintiff gave written notice to the Labor and
4 Workforce Development Agency (“LWDA”) and to ROLF of the specified provisions of the Labor
5 Code alleged to have been violated and the LWDA elected not to investigate.

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

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

23 117. Moreover, pursuant to Labor Code §1197.1, subdivision (a): “Any employer or
24 other person acting either individually or as an officer, agent, or employee of another person, who
25 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
26 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
27 wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant
28 to Section 203 as follows:

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

15 118. Plaintiff is informed and believes, and based thereon alleges, that ROLF
16 caused Plaintiff and aggrieved employees not to be paid minimum wages as a result of, without
17 limitation, routinely failing to pay Plaintiff and other aggrieved employees’ wages for all hours
18 worked or otherwise under its control due to, without limitation, routinely failing to accurately
19 track and/or pay for all hours actually worked; and engaging, suffering, or permitting employees to
20 be subjected to uneven rounding which deprived them of being compensated for all time worked.
21 As a direct and proximate result of ROLF’s conduct, Plaintiff and other aggrieved employees are
22 entitled to recover directly from ROLF civil penalties pursuant to Labor Code §1197.1.

23 119. In addition to the civil penalties recoverable under Labor Code §2699(a) and
24 (f), to the extent permitted by law, ROLF’s failure to pay Plaintiff and other aggrieved employees
25 timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for its violation
26 of Labor Code § 204 and 210. Specifically, ROLF failed to pay all wages owed within seven (7)
27 days of the close of the payroll period in accordance with Labor Code §204(d). Labor Code §210
28 (a) provides that “in addition to, and entirely independent and apart from, any other penalty

1 provided in this article, every person who fails to pay the wages of each employee as provided in
2 Sections...204...shall be subject to a civil penalty as follows: (1) for any initial violation, one
3 hundred dollars (\$100) for each failure to pay each employee; (2) for each subsequent violation, or
4 any wilful or intentional violation, two hundred dollars (\$200) for each failure to pay each
5 employee, plus 25 percent of the amount unlawfully withheld.” Accordingly, Plaintiff and
6 aggrieved employees are entitled to recover civil penalties for violations of Labor Code §§ 204 and
7 210.

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

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

PRAYER

22 WHEREFORE, on behalf of herself and all others similarly situated, Plaintiff prays for
23 judgment against Defendants as follows:

24 A. An order certifying that Plaintiff may pursue their claims against Defendants as a
25 class action on behalf of the Class Members;

26 B. An order appointing Plaintiff as class representative and appointing Plaintiff's
27 counsel as class counsel;

28 C. Penalties for inaccurate wage statements under Labor Code §226(e);

- 1 D. Damages for unpaid wages under Labor Code §§201 or 202;
2 E. Damages for unpaid penalty wages under Labor Code §203;
3 F. Damages for unpaid wages for missed meal periods under Labor Code §226.7;
4 G. Damages for unpaid wages for missed rest periods under Labor Code §226.7;
5 H. Damages for minimum wages;
6 I. Damages for premium wages;
7 J. Liquidated damages for unpaid minimum wages;
8 K. Damages for unpaid overtime wages under Labor Code §1194;
9 L. Restitution under Business and Professions Code §17203;
10 M. Pre-judgment interest;
11 N. Costs;
12 O. Reasonable attorney's fees;
13 P. Civil Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f); and
14 Q. Such other and further relief as the Court deems just and proper.
15

16 DATED: June 26, 2023

THE NOURMAND LAW FIRM, APC

17
18 By: /s/ James A. De Sario
Michael Nourmand, Esq.
James A. De Sario, Esq.
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 21, 2023, I served the following document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND RESTITUTION

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, addressed as follows:

Joseph W. Ozmer II, Esq.
Matthew E. Hayes, Esq.
KABAT CHAPMAN & OZMER, LLP
333 South Grand Avenue, Suite 2225
Los Angeles, California 90071

Kirsten Erath Barranti, Esq.
FOLEY & FOLEY PC
495 Palmer Avenue
Falmouth, Massachusetts 02540

BY MAIL: As follows: I am readily familiar with our office's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address stated above, following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on July 21, 2023, at Beverly Hills, California.

/s/ Alejandra Beltran
Alejandra Beltran