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VICTOR M. LANDA, on behalf
6 of himself and all others similarly situated

ELECTRONICALLY FILED
Superior Court of California,
County of Imperial
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF IMPERIAL - EL CENTRO COURTHOUSE**

10
11 VICTOR M. LANDA, on behalf of himself)
and all others similarly situated,)

12 Plaintiffs,)

13)
14 v.)

15 HAYKINGDOM, INC., a California)
16 corporation; and DOES 1 through 100,)
Inclusive)

17 Defendants.)
18)
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20)
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CASE NO.: ECU002942

SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

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

DEMAND FOR JURY TRIAL

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COMES NOW plaintiff VICTOR M. LANDA (hereinafter "Mr. Landa" and/or "Plaintiff")
on behalf of himself and all others similarly situated, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

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

2. For at least four (4) years prior to the filing of this action and through to the present Defendants on multiple occasions have had a pattern and practice of failing to pay wages for all time worked, including overtime wages, to Plaintiff and other non-exempt employees in the State of California, as a result of requiring Plaintiff and other California non-exempt employees to work off-the-clock, such as by, including but not limited to, requiring them to work through their meal breaks without compensation.

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

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

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

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

7. Plaintiff, on behalf of herself and all other similarly situated employees, brings this action pursuant to, including but not limited to, California Labor Code §§200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2699, et seq. and California Code of Regulations, Title 8, §11070, seeking unpaid overtime and minimum wages, premium wages for non-compliant meal and rest periods, penalties, civil penalties, and reasonable attorneys' fees and costs.

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

PARTIES

A. Plaintiff

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

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

B. Defendants

11. Defendant, Haykingdom, Inc., a California corporation, is an exporter of hay and other forage products with distribution facilities within the State of California. Haykingdom, Inc.

1 employed Plaintiff and similarly situated persons within the State of California.

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

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

13 FACTUAL BACKGROUND

14 14. For at least four (4) years prior to the filing of this action and through to the present
15 Defendants on multiple occasions have had a pattern and practice of failing to pay wages for all
16 time worked, including overtime wages, to Plaintiff and other non-exempt employees in the State
17 of California, as a result of requiring Plaintiff and other California non-exempt employees to work
18 off-the-clock by requiring them to work through their meal breaks without compensation.

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

26 16. Defendants have had a pattern and practice of on multiple occasions failing to
27 provide Plaintiff and similarly situated employees or former employees within the State of
28 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction

1 thereof and on multiple occasions failing to provide compensation at the regular rate of pay for
2 such unprovided rest periods as required by California wage and hour laws.

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

6 18. Defendants have failed to comply with Labor Code §226(a) by, on multiple
7 occasions, not providing itemized wage statements accurately showing, including but not limited
8 to, the name and address of the employer, total hours worked during the pay period and pay due
9 and owing for failure to pay wages as described herein.

10 19. At the time Plaintiff's employment and the employment of other former employees
11 of Defendants ended, Defendants on multiple occasions willfully failed to pay all earned wages as
12 described herein.

13 CLASS ACTION ALLEGATIONS

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

17 Non-Exempt Employee Class

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

21 Meal Period Class

22 All current and former employees of Defendants within the State of California at
23 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
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 Class").

24 Rest Period Class

25 All current and former employees of Defendants within the State of California at
26 any time commencing four (4) years preceding the filing of Plaintiff's complaint up
27 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 Class").

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1 **Late Pay Class**

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

5 **Wage Statement Class**

6 All current and former employees of Defendants within the State of California, to
7 whom, at any time commencing one (1) year preceding the filing of Plaintiff's
8 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
 Class").

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

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

15 A. **Numerosity**

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

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

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1 **B. Commonality**

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

- 4 (1) Did Defendants violate Labor Code §1194 by not compensating Class
5 Members overtime wages?
- 6 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
7 Members minimum wages for all hours worked?
- 8 (3) Did Defendants violate Labor Code § 512 by not providing Class Members
9 with meal periods?
- 10 (4) Did Defendants violate Labor Code § 226.7 by not providing Class Members
11 additional wages at the regular rate of pay for missed or interrupted meal
12 periods?
- 13 (5) Did Defendants violate Labor Code §226.7 by not providing Class Members
14 additional wages at the regular rate of pay for missed rest periods?
- 15 (6) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
16 Members upon termination or resignation all wages earned?
- 17 (7) Are Defendants liable to Class Members for penalty wages under Labor
18 Code § 203?
- 19 (8) Did Defendants violate Labor Code § 226(a) by not furnishing Class
20 Members with accurate wage statements?
- 21 (9) Did Defendants violate the Unfair Competition Law, Business and
22 Professions Code §17200, *et seq.*, by its unlawful practices as alleged
23 herein?
- 24 (10) Are Class Members entitled to restitution of penalty wages under Business
25 and Professions Code § 17203?
- 26 (11) Are Class Members entitled to attorney's fees?
- 27 (12) Are Class Members entitled to interest?
- 28 (13) Are Defendants liable for civil penalties pursuant to Labor Code § 2699(a)?

1 **C. Typicality**

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

8 **D. Adequacy of Representation**

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

12 **E. Superiority of Class Action**

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

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

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME WAGES**

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

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

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

14 32. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
15 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
16 forty hours in a work week and on multiple occasions these employees have not been paid overtime
17 wages, when they were required to work off-the-clock, such as including but not limited to, being
18 required to work through their meal breaks without compensation.

19 33. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
20 excess of eight hours per day and/or forty hours per week and without properly compensating
21 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
22 §1194.

23 34. As a result of the unlawful acts of Defendants, Plaintiff and the Non-Exempt
24 Employee Class have been deprived of overtime wages in an amounts to be determined at trial, and
25 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and
26 costs, pursuant to Labor Code §§1194 and 1199; Code of Civil Procedure §1021.5; and Civil Code
27 §3287.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

26 46. Plaintiff and the other members of the Meal Period Class are entitled to recover the
27 full amount of their unpaid additional premium pay for missed meal periods. Pursuant to Code of
28 Civil Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to

1 recover reasonable attorneys' fees and costs of suit.

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

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON TERMINATION

(By Plaintiff and the Class Against All Defendants)

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

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

15 57. Pursuant to Labor Code §§ 201 or 202, Plaintiff and other members of the Late Pay
16 Class were entitled upon termination to timely payment of all wages earned and unpaid prior to
17 termination. Discharged employees were entitled to payment of all wages earned and unpaid prior
18 to discharge immediately upon termination. Employees who resigned were entitled to payment of
19 all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
20 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
21 unpaid at the time of resignation.

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

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1 59. Defendants' failure to pay Plaintiff and members of the Late Pay Class all wages
2 earned prior to termination in accordance with Labor Code §§ 201 and 202 was wilful. Defendants
3 had the ability to pay all wages earned by Plaintiff and other members of the Late Pay Class at the
4 time of termination in accordance with Labor Code §§ 201 and 202, but intentionally adopted
5 policies or practices incompatible with the requirements of Labor Code §§ 201 and 202.

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

8 61. Pursuant to Labor Code § 203, Plaintiff and other members of the Late Pay Class
9 are entitled to penalty wages from the date they earned and unpaid wages were due, upon
10 termination, until paid, up to a maximum of 30 days.

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

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

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

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1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

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

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

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

8 67. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
9 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
10 accurate itemized statement showing the name and address of their employer, gross wages earned,
11 net wages earned, all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate by the employee.

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

15 69. Plaintiff and the other members of the Wage Statement Class are informed and
16 believe and thereon allege that at all relevant times, Defendants maintained and continue to
17 maintain a policy and practice of issuing wage statements that do not show, including but not
18 limited to, the name and address of the employer, all hours worked and all earned wages and pay
19 due for all hours worked at applicable rates of pay. Defendants' practices resulted and continue to
20 result in, the issuance of Wage Statements to Plaintiff and other members of the Class that do not
21 comply with the itemization requirements.

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

26 71. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
27 Wage Statement Class have suffered injury. The absence of accurate information on their wage
28 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery

1 and mathematical computations to determine the amount of wages owed, causes difficulty and
2 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
3 information about wages and amounts deducted from wages to state and federal government
4 agencies.

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

9 73. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
10 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
11 Code § 226(e) reasonable attorneys' fees and costs of suit.

12 SEVENTH CAUSE OF ACTION

13 UNFAIR COMPETITION

14 (By Plaintiff and Class Members Against All Defendants)

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

17 75. The unlawful conduct of Defendants alleged herein constitutes unfair competition
18 within the meaning of Business & Professions Code § 17200. Due to their unlawful business
19 practices in violation of the Labor Code, Defendants have gained a competitive advantage over
20 other comparable companies doing business in the state of California that comply with their
21 obligations to compensate employees in accordance with the Labor Code.

22 76. As a result of Defendants' unfair competition as alleged herein, Plaintiff and
23 similarly situated Class Members have suffered injury in fact and lost money or property. Plaintiff
24 and similarly situated Class Members have been deprived from not being compensated overtime
25 wages, from not being compensated minimum wages, and from not being provided with meal and
26 rest breaks or compensation in lieu thereof, as described herein.

27 77. Pursuant to Business & Professions Code § 17203 Plaintiff and similarly situated
28 Class Members are entitled to restitution of all wages and other monies owed to them under the

1 Labor Code, including interest thereon, in which they had a property interest which Defendants
2 failed to pay them but withheld and retained for themselves. Restitution of the money owed to
3 Plaintiff and similarly situated Class Members is necessary to prevent Defendants from becoming
4 unjustly enriched by their failure to comply with the Labor Code.

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

8 EIGHTH CAUSE OF ACTION

9 PRIVATE ATTORNEY GENERAL ACT

10 (By Plaintiff and Class Members Against All Defendants)

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

13 80. During the period beginning one year period preceding the filing of the
14 Complaint in this action (the "Civil Penalty Period"), Defendants violated, including but not
15 limited, to Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 510, 1194, 1194.2, 1197,
16 1197.1 and 1199.

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

20 82. Plaintiff has complied with the procedures for bringing suit specified in Labor
21 Code §2699.3. On or about May 26, 2023, Plaintiff gave written notice to the Labor and
22 Workforce Development Agency ("LWDA") and to Defendants of the specified provisions of the
23 Labor Code alleged to have been violated and Plaintiff anticipates that the LWDA will elect not to
24 investigate.

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

1 per pay period for each subsequent violation.

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

15 85. Moreover, pursuant to Labor Code §1197.1, subdivision (a): "Any employer
16 or other person acting either individually or as an officer, agent, or employee of another person,
17 who pays or causes to be paid to any employee a wage less than the minimum fixed by an
18 applicable state or local law, or by an order of the commission shall be subject to a civil penalty,
19 restitution of wages, liquidated damages payable to the employee, and any applicable penalties
20 imposed pursuant to Section 203 as follows:

- 21 a. For any initial violation that is intentionally committed, one hundred dollars (\$100)
22 for each unpaid employee for each pay period of which the employee is underpaid.
23 This amount shall be in addition to an amount sufficient to recover underpaid
24 wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
25 imposed pursuant to Section 203.
- 26 b. For each subsequent violation for the same specific offence, two hundred fifty
27 dollars (\$250) for each underpaid employee for each pay period for which the
28 employee is underpaid regardless of whether the initial violation is intentionally

1 committed. This amount shall be in addition to an amount sufficient to recover
2 underpaid wages, liquidated damages pursuant to Section 1194.2, and any
3 applicable penalties imposed pursuant to Section 203.

4 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
5 Section 203, recovered pursuant to this section shall be paid to the affected
6 employee.”

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

15 87. In addition to the civil penalties recoverable under Labor Code §2699(a) and
16 (f), to the extent permitted by law, Defendants’ failure to pay Plaintiff and other aggrieved
17 employees timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for
18 Defendants’ violation of Labor Code § 204 and 210. Specifically, Defendants failed to pay all
19 wages owed within seven (7) days of the close of the payroll period in accordance with Labor Code
20 §204(d). Labor Code §210 (a) provides that “in addition to, and entirely independent and apart
21 from, any other penalty provided in this article, every person who fails to pay the wages of each
22 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for
23 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for
24 each subsequent violation, or any wilful or intentional violation, two hundred dollars (\$200) for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”
26 Accordingly, Plaintiff and aggrieved employees are entitled to recover civil penalties for violations
27 of Labor Code §§ 204 and 210.

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

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

PRAYER

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

17 A. An order certifying that Plaintiff may pursue his claims against Defendants as a
18 class action on behalf of the Class Members;

19 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
20 counsel as class counsel;

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

22 D. Damages for unpaid wages under Labor Code §§201 or 202;

23 E. Damages for unpaid penalty wages under Labor Code §203;

24 F. Damages for unpaid wages for missed meal periods under Labor Code §226.7;

25 G. Damages for unpaid wages for missed rest periods under Labor Code §226.7;

26 H. Damages for minimum wages:

27 I. Damages for premium wages;

28 J. Liquidated damages for unpaid minimum wages;

- 1 K. Damages for unpaid overtime wages under Labor Code §1194;
2 L. Restitution under Business and Professions Code §17203;
3 M. Civil Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f);
4 N. Pre-judgment interest;
5 O Costs;
6 P. Reasonable attorneys' fees; and
7 Q. Such other and further relief as the Court deems just and proper
8

9 DATED: September 17, 2025

THE NOURMAND LAW FIRM, APC

10 By: /s/ James A. De Sario
11 Michael Nourmand, Esq.
12 James A. De Sario, Esq.
13 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

5 On September 25, 2025, I served the following document(s) described as:

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

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

9 Ryan H. Nell, Esq.
10 PETTIT KOHN INGRASSIA LUTZ & DOLIN PC
11 11622 El Camino Real, Suite 300
San Diego, California 92130

12 Courtesy Copy Bv Email: rnell@pettitkohn.com

13 BY MAIL: As follows: I am readily familiar with our office's practice for collection and
14 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
15 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.

16 I declare under penalty of perjury under the laws of the State of California that the above is
17 true and correct and that this Proof of Service was executed on September 25, 2025, at Beverly
Hills, California.

18
19 /s/ Alejandra Beltran
20 Alejandra Beltran
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