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ESTEFANNY OLIVA, on behalf
6 of herself and all others similarly situated

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

10
11 ESTEFANNY OLIVA, on behalf of herself
and all others similarly situated,

12 **Plaintiffs,**

13
14 **v.**

15 SAVINO DEL BENE U.S.A., INC., a New
16 York corporation; and DOES 1 through 100,
Inclusive

17 **Defendants.**
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CASE NO.: 24STCV00777

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGE;
3. FAILURE TO PROVIDE REST PERIODS;
4. FAILURE TO PROVIDE MEAL 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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FILED
Superior Court of California
County of Los Angeles

04/16/2024

David W. Slayton, Executive Officer / Clerk of Court

By: S. Drew Deputy

COMES NOW Plaintiff ESTEFANNY OLIVA (hereinafter "Ms. Oliva" and/or "Plaintiff")
on behalf of herself 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 SAVINO DEL BENE U.S.A. 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, on multiple occasions to Plaintiff and other non-exempt employees in the State of California, such that in the aggregate employees are underpaid wages as a result of Defendants' pattern and practice of unevenly rounding time worked by its employees.

3. 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 requiring Plaintiff and other non-exempt employees in the State of California to work off-the-clock and thereby failing to pay wages for all time worked, including overtime wages, on multiple occasions to Plaintiff and other non-exempt employees in the State of California.

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 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.

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1 California. Defendants employ numerous Class Members in the State of California.

2 11. Plaintiff, Ms. Oliva, is a resident of the State of California. At all relevant times
3 herein, she has been employed by Defendants as a non-exempt employee in California.

4 **B. Defendants**

5 12. Defendant, SAVINO DEL BENE U.S.A., INC., a New York corporation, provides
6 freight forwarding and logistic services within the State of California. SAVINO DEL BENE
7 U.S.A., INC. employed Plaintiff and similarly situated persons within the State of California.

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

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

19 **FACTUAL BACKGROUND**

20 15. Plaintiff and other similarly situated employees have not been paid wages, including
21 overtime wages, for all time worked on multiple occasions, such that in the aggregate employees
22 are underpaid wages as a result of Defendants' pattern and practice of unevenly rounding time
23 worked by its employees.

24 16. Plaintiff and other similarly situated employees have not been paid wages, including
25 overtime wages, for all time worked on multiple occasions, because Defendants required them to
26 perform work off-the-clock without compensation.

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

8 18. Defendants have had a pattern and practice of on multiple occasions failing to
9 provide Plaintiff and similarly situated employees or former employees within the State of
10 California rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
11 thereof and on multiple occasions failing to provide compensation at the regular rate of pay for
12 such unprovided rest periods as required by California wage and hour laws. Plaintiff did not take
13 any rest breaks.

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

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

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

24 **CLASS ACTION ALLEGATIONS**

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

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1 **Non-Exempt Employee Class**

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

6 **Meal Period Class**

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

11 **Rest Period Class**

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

16 **Late Pay Class**

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

22 **Wage Statement Class**

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

28 23. 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.

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

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1 **A. Numerosity**

2 25. The potential members of the Class as defined are so numerous that joinder of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that there are over 50 Class
5 Members employed by Defendants within the State of California.

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

10 **B. Commonality**

11 27. There are questions of law and fact common to Class Members. These common
12 questions include, but are not limited to:

- 13 (1) Did Defendants violate Labor Code §1194 by not compensating Class
14 Members overtime wages?
- 15 (2) Did Defendants violate Labor Code §§ 1194 and 1197 by not paying Class
16 Members minimum wages for all hours worked?
- 17 (3) Did Defendants violate Labor Code § 512 by not providing Class Members
18 with meal periods?
- 19 (4) Did Defendants violate Labor Code § 226.7 by not providing Class Members
20 additional wages at the regular rate of pay for missed or interrupted meal
21 periods?
- 22 (5) Did Defendants violate Labor Code §226.7 by not providing Class Members
23 additional wages at the regular rate of pay for missed rest periods?
- 24 (6) Did Defendants violate Labor Code §§ 201 and 202 by failing to pay Class
25 Members upon termination or resignation all wages earned?
- 26 (7) Are Defendants liable to Class Members for penalty wages under Labor
27 Code § 203?

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1 (8) Did Defendants violate Labor Code § 226(a) by not furnishing Class
2 Members with accurate wage statements?

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

6 (10) Are Class Members entitled to restitution of penalty wages under Business
7 and Professions Code § 17203?

8 (11) Are Class Members entitled to attorney's fees?

9 (12) Are Class Members entitled to interest?

10 **C. Typicality**

11 28. The claims of Plaintiff herein alleged are typical of those claims which could be
12 alleged by any member of the classes, and the relief sought is typical of the relief which would be
13 sought by each of the members of the classes in separate actions. Plaintiff and all members of the
14 Classes sustained injuries and damages arising out of and caused by Defendants' common course of
15 conduct in violation of laws and regulations that have the force and effect of law and statutes as
16 alleged herein.

17 **D. Adequacy of Representation**

18 29. Plaintiff will fairly and adequately represent and protect the interests of the
19 members of the Classes. Counsel who represents Plaintiff is competent and experienced in
20 litigating wage and hour class actions.

21 **E. Superiority of Class Action**

22 30. A class action is superior to other available means for the fair and efficient
23 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
24 questions of law and fact common to the Class predominate over any questions affecting only
25 individual members of the Class. Each member of the Class has been damaged and is entitled to
26 recovery by reason of Defendants' illegal pattern and practice of on multiple occasions failing to
27 pay overtime wages, failing to pay minimum wages, failing to provide meal and rest breaks or
28 compensation in lieu thereof, failing to provide accurate itemized wage statements and failing to

1 pay all wages due upon termination and/or resignation, as described herein.

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

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME WAGES**

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

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

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

19 34. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
20 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
21 forty hours in a work week and were not paid overtime wages for all hours worked as a result of,
22 including but not limited to, Defendants improperly rounding time worked by its employees and
23 requiring Plaintiff and Non-Exempt Employee Class perform work off-the-clock.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(By Plaintiff and the Class Against All Defendants)

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

11 38. At all relevant times, Plaintiff and the members of the Non-Exempt Employee
12 Class were employees of Defendants covered by Labor Code §1197 and applicable Wage Orders.

13 39. Pursuant to Labor Code §1197 and applicable Wage Orders, Plaintiff and the
14 members of the Non-Exempt Employee Class were entitled to receive minimum wages for all hours
15 worked.

40. At all times herein mentioned, to the extent that Plaintiff and Non-Exempt Employee Class worked for Defendants during shifts that were less than eight hours in a work day and/or less than forty hours in a work week, on multiple occasions these employees have not been paid minimum wage, such that in the aggregate employees are underpaid wages as a result of Defendants' pattern and practice of unevenly rounding time worked by its employees and requiring Plaintiff and Non-Exempt Employee Class to perform work off-the-clock.

41. Defendants failure to pay Plaintiff and members of the Non-Exempt Employee Class minimum wages for all hours worked, as described herein, is in violation of Labor Code §1197 and applicable Wage Orders. As a result of Defendants' pattern and practice, Plaintiff and members of the 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.

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1 42. Pursuant to Labor Code §§ 1194 and 1194.2 Plaintiff and members of the Non-
2 Exempt Employee Class are entitled to recover the full amount of unpaid minimum wages,
3 prejudgment interest, liquidated damages, reasonable attorneys' fees, and costs of suit.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

18 45. 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 46. By their failure on multiple occasions to provide Plaintiff and members of the Meal
23 Period Class with the meal periods contemplated by California law, and failing to provide
24 compensation for such unprovided meal periods at the regular rate of pay, as alleged above,
25 Defendants willfully violated the provisions of Labor Code §512 and applicable Wage Orders.

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

1 practice of not paying upon termination, the wages owed to them as a consequence of failing to pay
2 non-exempt employees for earned wages, as described herein.

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

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

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

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

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

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

24 SIXTH CAUSE OF ACTION

25 FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

26 (By Plaintiff and the Class Against All Defendants)

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

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

3 69. Pursuant to Labor Code § 226(a), Plaintiff and the other members of the Wage
4 Statement Class were entitled to receive, semi-monthly or at the time of each payment of wages, an
5 accurate itemized statement showing gross wages earned, net wages earned, all applicable hourly
6 rates in effect during the pay period and the corresponding number of hours worked at each hourly
7 rate by the employee.

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

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

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

21 73. As a result of Defendants' unlawful conduct, Plaintiff and the other members of the
22 Wage Statement Class have suffered injury. The absence of accurate information on their wage
23 statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery
24 and mathematical computations to determine the amount of wages owed, causes difficulty and
25 expense in attempting to reconstruct time and pay records, and led to submission of inaccurate
26 information about wages and amounts deducted from wages to state and federal government
27 agencies.

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

5 75. Pursuant to Labor Code § 226(e) and § 226(g), Plaintiff and the other members of
6 the Wage Statement Class were entitled to recover the full amount of penalties due under Labor
7 Code § 226(e) reasonable attorney's fees and costs of suit.

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(By Plaintiff and Class Members Against All Defendants)**

11 76. 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.

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

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

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

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

4 **EIGHTH CAUSE OF ACTION**

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

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

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

9 82. Plaintiff has complied with the procedures for bringing suit specified in Labor
10 Code §2699.3. On or about January 10, 2024, Plaintiff gave written notice to the Labor and
11 Workforce Development Agency ("LWDA") and Defendants of the specified provisions of the
12 Labor Code alleged to have been violated and the LWDA elected not to investigate.

13 83. During the period beginning one year period preceding the filing of Plaintiff's
14 written notice to the LWDA (the "Civil Penalty Period"), Defendants violated, including but not
15 limited, to Labor Code §§200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194,
16 1194.2, 1197, 1197.1.

17 84. 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 85. Pursuant to Labor Code §2699(a) and (f), Plaintiff and the aggrieved employees are
21 entitled to recover civil penalties for Defendants' violations of the specified Labor Code sections
22 during the Civil Penalty Period in the amount of one hundred dollars (\$100) for each employee per
23 pay period for the initial violation and two hundred dollars (\$200) for each employee per pay
24 period for each subsequent violation.

25 86. In addition to the civil penalties recoverable under Labor Code §2699(a) and
26 (f), to the extent permitted by law, Defendants' failure to provide Plaintiff and aggrieved
27 employees with accurate itemized wage statements, as described herein, entitles Plaintiff to seek
28 separate civil penalties for Defendants' violation of Labor Code §226 (a) and 226 (e). For

1 violations of Labor Code §226 (a), Plaintiff seeks civil penalties provided by Labor Code §226.3.
2 Pursuant to Labor Code § 226.3, “[a]ny employer who violates subdivision (a) of section 226 shall
3 be subject to a civil penalty in the amount of two hundred dollars (\$250) per employee per
4 violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation
5 in a subsequent citation, for which the employer fails to provide the employee a wage deduction
6 statement or fails to keep the required in subdivision (a) of section 226.” Accordingly, Plaintiff
7 and aggrieved employees are entitled to recover civil penalties for violations of Labor Code §
8 226.3 and seeks default civil penalties for each of Defendants’ numerous violations of Labor Code
9 §226 (e).

10 87. In addition, pursuant to Labor Code §1197.1, subdivision (a): “Any employer or
11 other person acting either individually or as an officer, agent, or employee of another person, who
12 pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable
13 state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
14 wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant
15 to Section 203 as follows:

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

1 employee.”

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

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

23 89. Lastly, pursuant to Labor Code § 558 any employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare Commission
26 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
27 each underpaid employee for each pay period for which the employee was underpaid in addition to
28 an amount sufficient to recover underpaid wages; and (2) For each subsequent violation, one

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
2 was underpaid in addition to an amount sufficient to recover underpaid wages. As indicated
3 herein, Plaintiff and aggrieved employees were underpaid wages as a result of the asserted Labor
4 Code violations and therefore are entitled to recover civil penalties under Labor Code §558.

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

8 **PRAYER**

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

11 A. An order certifying that Plaintiff may pursue her claims against Defendants as a
12 class action on behalf of the Class Members;

13 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
14 counsel as class counsel;

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

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

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

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

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

20 H. Damages for minimum wages;

21 I. Damages for premium wages;

22 J. Liquidated damages for unpaid minimum wages;

23 K. Damages for unpaid overtime wages under Labor Code §1194;

24 L. Restitution under Business and Professions Code §17203;

25 M. Civil Penalties under Labor Code §§ 210, 226.3, 558, 1197.1, 2699(a)-(f);

26 N. Pre-judgment interest;

27 O. Costs;

28 P. Reasonable attorney's fees; and

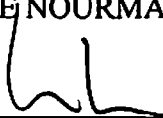
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Q. Such other and further relief as the Court deems just and proper

DATED: April 16, 2024

THE NOURMAND LAW FIRM, APC

By:



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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

5 On April 16, 2024, I served the following document(s) described as:

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

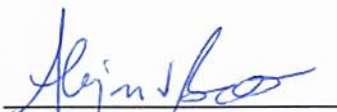
8 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope,
with postage thereon fully prepaid, addressed as follows:

9 Shain Wasser, Esq.
Frank M. Falcone, Esq.
10 KENNEDYS CMK LLP
455 Market Street, Suite 1900
11 San Francisco, California 94105

12 Courtesy Copy by Email: shain.wasser@kennedyslaw.com; frank.falcone@kennedyslaw.com

13 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.
14 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
15 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 April 16, 2024, at Beverly Hills,
California.

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Alejandra Beltran