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County of Solano
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JOSE BUSTOS RUIZ, on behalf
of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

JOSE BUSTOS RUIZ, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

TRIPACK aka TRIPACK, INC., a California
corporation; VICTORIA RAMIREZ, an
individual; EDWARD J. WRIGHT JR., an
individual; and DOES 1 through 100,
Inclusive

Defendants.

CASE NO.: CU24-04526

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

DEMAND FOR JURY TRIAL

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COMES NOW plaintiff JOSE BUSTOS RUIZ (hereinafter “Mr. Ruiz” 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 TRIPACK aka TRIPACK, INC. and any subsidiaries or affiliated companies, VICTORIA RAMIREZ (“MS. RAMIREZ”), and EDWARD J. WRIGHT JR. (“MR. WRIGHT”) (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 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 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.

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5. 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.

6. Plaintiff, on behalf of himself 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, 1199, 2699, et al., and California Code of Regulations, Title 8, §11070, seeking unpaid overtime and minimum wages, premium wages for non-compliant meal periods, statutory penalties, civil penalties, reasonable attorney's fees and costs.

7. 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

8. 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.

9. Plaintiff 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

10. Defendant, Tripack aka Tripack, Inc., a California Corporation, provides warehousing and packaging for the wine industry within the State of California. Tripack aka Tripack, Inc. employed Plaintiff and similarly situated persons within the State of California.

11. Defendant, MS. RAMIREZ is and was, at all times relevant hereto, an individual residing and doing business in the State of California. Plaintiff is further informed and believes and thereon alleges that MS. RAMIREZ is and was the Chief Financial Officer and Chief Executive

1 Officer of TRI PACK aka TRIPACK, INC.

2 12. Defendant, MR. WRIGHT is and was, at all times relevant hereto, an individual
3 residing and doing business in the State of California. Plaintiff is further informed and believes and
4 thereon alleges that MR. WRIGHT is and was the Secretary of TRIPACK aka TRIPACK, INC.

5 13. 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 14. Plaintiff is informed and believes, and based thereon alleges, that each defendant
13 acted in all respect pertinent to this action as the agent of the other defendant, carried out a joint
14 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
15 legally attributable to the other defendants.

16 15. All of the acts and conduct herein and below described of TRIPACK aka
17 TRIPACK, INC. were duly authorized, ordered, and directed by MS. RAMIREZ and MR.
18 WRIGHT. In addition thereto, TRIPACK aka TRIPACK, INC. participated in the aforementioned
19 acts and conduct of MS. RAMIREZ and MR. WRIGHT and, upon completion of the aforesaid acts
20 and conduct of MS. RAMIREZ and MR. WRIGHT, TRIPACK aka TRIPACK, INC. respectively
21 and collectively ratified, accepted the benefits of, condoned, lauded, acquiesced, authorized and
22 otherwise approved of each and all of the said acts and conduct of the aforementioned MS.
23 RAMIREZ and MR. WRIGHT.

24 16. To the extent that TRIPACK aka TRIPACK, INC. claims to be a California
25 corporation, it is an alter egos of MS. RAMIREZ and MR. WRIGHT. Plaintiff is informed and
26 believes, and based thereon allege, that at all times mentioned herein, there was such a unity of
27 interest between MS. RAMIREZ and MR. WRIGHT on the one hand and TRIPACK aka
28 TRIPACK, INC. on the other hand, that the separate business entity of TRIPACK aka TRIPACK,

1 INC. should be disregarded, and TRIPACK aka TRIPACK, INC. and MS. RAMIREZ and MR.
2 WRIGHT should be treated merely as the alter-egos of each other. Adherence to the fiction of
3 separate existence of TRIPACK aka TRIPACK, INC. as an entity distinct from MS. RAMIREZ
4 and MR. WRIGHT would sanction fraud and injustice in that MS. RAMIREZ and MR. WRIGHT
5 could evade personal liability for their wrongdoing alleged in this Complaint, and could and would
6 continue in the corporation's name to perpetuate the fraudulent plan, scheme and devise alleged in
7 this Complaint.

8 17. Plaintiff is further informed and believes that MS. RAMIREZ and MR. WRIGHT
9 and TRIPACK aka TRIPACK, INC. failed to adhere to TRIPACK aka TRIPACK, INC.'s separate
10 identity, among other ways, as follows:

- 11 a. Corporation funds were withdrawn for personal use without treating **such**
12 withdrawals as salaries or dividends;
- 13 b. MS. RAMIREZ and MR. WRIGHT commingled thier funds with those of
14 TRIPACK aka TRIPACK, INC. and vice versa;
- 15 c. MS. RAMIREZ and MR. WRIGHT guarantied the debts of the corporation
16 and vice versa;
- 17 d. MS. RAMIREZ and MR. WRIGHT at all times herein mentioned,
18 completely controlled, dominated, managed and operated TRIPACK aka
19 TRIPACK, INC.;
- 20 e. TRIPACK aka TRIPACK, INC. was created, and is being continued,
21 pursuant to a fraudulent plan, and devised, conceived and operated by MS.
22 RAMIREZ and MR. WRIGHT to defraud Plaintiff and the public in general;
23 and
- 24 f. TRIPACK aka TRIPACK, INC. is a mere shell, instrumentally and conduit,
25 without adequate capital through which MS. RAMIREZ and MR. WRIGHT
26 carries on the business in the corporation's name.

27 18. MS. RAMIREZ and MR. WRIGHT is, on information and belief, the Chief
28 Financial Officer, Chief Executive Officer and Secretary of TRIPACK aka TRIPACK, INC., who

1 violated or caused to be violated Labor Code §§ 203, 226, 226.7, and 1194, in direct violation of
2 Labor Code § 558.1, and thereby MS. RAMIREZ and MR. WRIGHT may be held personally liable
3 as the employer for such violations.

4 FACTUAL BACKGROUND

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

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

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

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

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

26 CLASS ACTION ALLEGATIONS

27 24. Plaintiff brings this action on behalf of himself, and all others similarly situated,
28 as a class action pursuant to California Code of Civil Procedure §382. Plaintiff seeks to represent

four Classes composed of and defined as follows:

Non-Exempt Employee Class

All current and former employees of Defendants 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 (collectively referred to as "Non-Exempt Employee Class").

Meal Period Class

All current and former employees of Defendants 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 5 hours or more (collectively referred to as "Meal Period Class").

Late Pay Class

All former employees of Defendants 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 Class").

Wage Statement Class

All current and former employees of Defendants 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 Class").

25. 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.

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

A. Numerosity

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

28. Accounting for employee turnover during the relevant periods necessarily increases

1 this number. Plaintiff alleges Defendants' employment records would provide information as to the
2 number and location of all Class Members. Joinder of all members of the proposed Class is not
3 practicable.

4 **B. Commonality**

5 29. There are questions of law and fact common to Class Members. These common
6 questions include, but are not limited to:

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

1 **C. Typicality**

2 30. 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 31. 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 32. 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 33. 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.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

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

28 34. Plaintiff realleges and incorporates by reference all of the allegations contained in

1 the preceding paragraphs of this Complaint as though fully set forth herein.

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

10 36. At all times herein mentioned, Plaintiff and Non-Exempt Employee Class worked
11 for Defendants during shifts that consisted of more than eight hours in a work day and/or more than
12 forty hours in a work week and on multiple occasions these employees have not been paid overtime
13 wages, such that in the aggregate employees are underpaid overtime wages as a result of
14 Defendants’ pattern and practice of unevenly rounding time worked by its employees.

15 37. Accordingly, by requiring Plaintiff and Non-Exempt Employee Class to work in
16 excess of eight hours per day and/or forty hours per week and without properly compensating
17 overtime wages, as described herein, Defendants willfully violated the provisions of Labor Code
18 §1194.

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

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

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

27 39. 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 all of his or her duties. Plaintiff and other members of the Meal Period Class were on multiple
2 occasions were not provided with requisite meal periods as contemplated under the law since
3 employees would be prevented and discouraged by workplace interruptions which caused missed,
4 short and late meal periods.

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

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

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

16 50. Plaintiff and the other members of the Meal Period Class are entitled to recover the
17 full amount of their unpaid additional premium pay for missed meal periods. Pursuant to Code of
18 Civil Procedure §1021.5, Plaintiff and the other members of the Meal Period Class are entitled to
19 recover reasonable attorney's fees and costs of suit.

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

23 **FOURTH CAUSE OF ACTION**

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

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

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

28 53. At all relevant times, Plaintiff and other members of the Late Pay Class were

1 employees of Defendants covered by Labor Code §§ 201 and 202.

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

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

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

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

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

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

28 60. As a result of Defendants' unlawful conduct Plaintiff and the other members of the

1 Late Pay Class have suffered damages in an amount subject to proof, to the extent they were not
2 paid all penalty wages owed under Labor Code § 203.

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

8 **FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

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

11 62. 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 63. At all relevant times, Plaintiff and the other members of the Wage Statement Class
14 were employees of Defendants covered by Labor Code § 226.

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

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

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

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

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

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

SEVENTH CAUSE OF ACTION

CIVIL PENALTIES LABOR CODE §2699 et seq.

(By Plaintiff and Aggrieved Employees Against All Defendants)

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

77. Plaintiff has complied with the procedures for bringing suit specified in Labor
Code §2699.3. On or about June 13, 2024, Plaintiff gave written notice to the Labor and
 Workforce Development Agency (“LWDA”) and Defendants of the specified provisions of the
 Labor Code alleged to have been violated and the LWDA elected not to investigate.

78. During the period beginning one year period preceding the filing of Plaintiff's written notice to the LWDA (the "Civil Penalty Period"), Defendants violated, including but not limited, to Labor Code §§200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, and 1199.

28 79. Labor Code §2699(a) and (g) authorize an aggrieved employee, on behalf of

1 themselves and other current and former employees, to bring a civil action to recover civil
2 penalties pursuant to the procedures specified in Labor Code §2699.3.

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

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

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

1 to keep the required in subdivision (a) of section 226." Accordingly, Plaintiff and aggrieved
2 employees are entitled to recover civil penalties for violations of Labor Code § 226.3 and seeks
3 default civil penalties for each of Defendants' numerous violations of Labor Code §226 (e).

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

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

24 Plaintiff is informed and believes, and based thereon alleges, that Defendants' caused Plaintiff and
25 aggrieved employees not to be paid minimum wages as a result of Defendants, without limitation,
26 routinely failing to pay Plaintiff and other aggrieved employees' wages for all hours worked or
27 otherwise under Defendants' control due to, without limitation, routinely failing to accurately track
28 and/or pay for all hours actually worked; and engaging, suffering, or permitting employees to work

1 off the clock. As a direct and proximate result of Defendants' conduct, Plaintiff and other
2 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
3 Labor Code §1197.1.

4 84. In addition to the civil penalties recoverable under Labor Code §2699(a) and
5 (f), to the extent permitted by law, Defendants' failure to pay Plaintiff and other aggrieved
6 employees timely wages for all hours worked, entitles Plaintiff to seek separate civil penalties for
7 Defendants' violation of Labor Code §§ 204 and 210. Specifically, Defendants failed to pay all
8 wages owed within seven days of the close of the payroll period in accordance with Labor Code
9 §204(d). Labor Code §210 (a) provides that "in addition to, and entirely independent and apart
10 from, any other penalty provided in this article, every person who fails to pay the wages of each
11 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for any
12 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) for each
13 subsequent violation, or any wilful or intentional violation, two hundred dollars (\$200) for each
14 failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Accordingly,
15 Plaintiff and aggrieved employees are entitled to recover civil penalties for violations of Labor
16 Code §§ 204 and 210.

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

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

1 penalties.

2 **PRAYER**

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

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

7 B. An order appointing Plaintiff as Class representative and appointing Plaintiff's
8 counsel as class counsel;

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

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

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

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

13 G. Damages for minimum wages;

14 H. Damages for premium wages;

15 I. Liquidated damages for unpaid minimum wages;

16 J. Damages for unpaid overtime wages under Labor Code §1194;

17 K. Restitution under Business and Professions Code §17203;

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

19 M. Pre-judgment interest;

20 N. Costs;

21 O. Reasonable attorney's fees; and

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

23
24 DATED: October 18, 2024

THE NOURMAND LAW FIRM, APC

25
26 By: /s/ James A. De Sario

27 Michael Nourmand, Esq.

James A. De Sario, Esq.

28 Attorneys for Plaintiff