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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

14 CLAUDIA GRANCIANO, individually and on
behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 SOUTHWIND FOODS, LLC, a California
18 limited liability company; STAFFPOINT, LLC,
a California limited liability company; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. BC538900

CLASS ACTION

**THIRD AMENDED CLASS ACTION
COMPLAINT**

- (1) Failure to Pay Wages for All Hours Worked (Labor Code § 1194);
- (2) Failure to Pay Overtime Compensation (Labor Code § 510);
- (3) Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512);
- (4) Violation of the Fair Labor Standards Act (“FLSA”) (29 U.S.C. 201, *et seq.*);
- (5) Failure to Timely Pay Wages Upon Termination or Resignation (Labor Code §§ 201 and 202);
- (6) Failure to Furnish Accurate Wage Statements (Labor Code § 226(a));
- (7) Unlawful, Deceptive, and/or Unfair Business Practices (Business & Professions Code §§ 17200, *et seq.*); and
- (8) Violation of the Private Attorneys General Act (“PAGA”) for Failure to Provide Accurate, Itemized Wage Statements (Labor Code § 2698, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiffs Claudia Granciano and Ricardo Contreras (“Plaintiffs”), individually and on behalf of all others similarly situated, hereby allege as follows:

INTRODUCTION

1. This class and representative action complaint challenges the policies and practices of Southwind Foods, LLC, Staffpoint, LLC, Alliance Professional Business Solutions, Inc., and Does 2 through 50, inclusive (collectively, “Defendants”), which violate rights of Californians under the California Labor Code, the Industrial Welfare Commission’s (“IWC”) Wage Order 8-2001 (“Wage Order 8”), Business & Professions Code §§ 17200, *et seq.*, the Fair Labor Standards Act (“FLSA”), 29 U.S.C. 201, *et seq.*, and other applicable statutes and regulations. Defendants routinely round employees’ recorded working hours for purposes of compensation so as to result in failure to compensate employees for all hours worked, fail to pay overtime compensation for all overtime hours worked, fail to provide all meal periods as required by California law, fail to pay wages due to employees in a timely manner upon termination or resignation, and fail to provide accurate wage statements as required by California law. Defendants’ current and former employees have been damaged as a direct result of the above-described unlawful employment practices. Thus, Plaintiffs and other similarly-situated current and former employees are owed substantial unpaid wages and applicable penalties.

2. This complaint is also a representative action for the recovery of penalties brought pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.* PAGA permits an “aggrieved employee” to bring a lawsuit on behalf of himself and other current and former employees to recover civil penalties for Defendants’ violations of California’s Labor Code. Accordingly, Plaintiff Ricardo Contreras seeks penalties on behalf of himself and other current and former employees of Defendants for their past and ongoing violations of the California Labor Code’s wage statement requirements as set forth in Labor Code section 226, subdivision (a).

1 **JURISDICTION AND VENUE**

2 3. The California Superior Court has jurisdiction over this action pursuant to
3 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
4 in all causes except those given by statute to other trial courts.” The statutes under which this
5 action is brought do not specify any other basis for jurisdiction.

6 4. The California Superior Court has jurisdiction over Defendants because they are
7 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
8 citizens of California, or otherwise intentionally availed themselves of the California market so
9 as to render the exercise of jurisdiction over them by the California courts consistent with
10 traditional notions of fair play and substantial justice.

11 5. Venue is proper in the County of Los Angeles because Defendants exist,
12 transact business and/or have offices in this Judicial District; and/or venue is proper in this
13 Court pursuant to California Code of Civil Procedure § 395 because certain acts and omissions
14 complained of arose in this County.

15 **PARTIES**

16 6. Plaintiff Claudia Granciano is, and at all relevant times has been, a resident of
17 Los Angeles County, California. Plaintiff Granciano was an “employee” as that term is used in
18 the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders
19 regulating wages, hours, and working conditions. While employed by Defendants, Plaintiff
20 Granciano was routinely denied compensation for all hours worked, was not timely
21 compensated for all hours worked upon termination, and was not provided with accurate wage
22 statements. Plaintiff Granciano was employed by Defendants at the Southwind corporate
23 office, located at 2900 Ayers Ave., Los Angeles, California 90058, in non-exempt positions
24 from approximately September 2005 until she was terminated in or about September 2013.

25 7. Plaintiff Ricardo Contreras is, and at all relevant times has been, a resident of
26 Los Angeles County, California. Plaintiff was an “employee” as that term is used in the
27 California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders
28 regulating wages, hours, and working conditions. While employed by Defendants Plaintiff

1 Contreras was not provided with accurate wage statements. Plaintiff Contreras was employed
2 by Defendants at Staffpoint offices located at 720 N. Valley St., Anaheim, California 92801,
3 from approximately November 2008 to July 3, 2015.

4 8. Defendant Southwind Foods, LLC (“Southwind”) is, and at all relevant times
5 was, a California limited liability company having its principal place of business at 2900 Ayers
6 Avenue, Los Angeles, California 90058. Plaintiffs are informed and believe, and based
7 thereon allege, that Southwind operates throughout the State of California, including in the
8 County of Los Angeles. Southwind is a “person” as defined in Labor Code § 18 and California
9 Business & Professions Code § 17201. Southwind is also an “employer” as that term is used in
10 the California Labor Code, the IWC Wage Orders, and the FLSA.

11 9. Defendant Staffpoint, LLC (“Staffpoint”) is, and at all relevant times was, a
12 California limited liability company having its principal place of business at 450 East
13 Riverboat Way, Orange, California 92865. Plaintiffs are informed and believe, and based
14 thereon allege, that Staffpoint operates throughout the State of California. Staffpoint is a
15 “person” as defined in Labor Code § 18 and California Business & Professions Code § 17201.
16 Staffpoint is also an “employer” as that term is used in the California Labor Code, the IWC
17 Wage Orders, and the FLSA.

18 10. Defendant Alliance Professional Business Solutions, Inc. (“Alliance”) is, and at
19 all relevant times was, a California corporation having its principal place of business at 9852
20 Katella Avenue, #334, Anaheim, California 92804. Plaintiffs are informed and believe, and
21 based thereon allege, that Alliance operates throughout the State of California. Alliance is a
22 “person” as defined in Labor Code § 18 and California Business & Professions Code § 17201.
23 Alliance is also an “employer” as that term is used in the California Labor Code, the IWC
24 Wage Orders, and the FLSA.

25 11. The true names and capacities, whether corporate, associate, individual, or
26 otherwise of Does 2 through 50, inclusive, are unknown to Plaintiffs, who therefore sue said
27 defendants by such fictitious names pursuant to California Code of Civil Procedure § 474.
28 Each of the defendants designated herein as a Doe is negligently or otherwise legally

1 responsible in some manner for the events and happenings herein referred to and caused
2 injuries and damages proximately thereby to Plaintiffs, as herein alleged. Plaintiffs will seek
3 leave of Court to amend this complaint to show the names and capacities when the same have
4 been ascertained.

5 12. Plaintiffs are informed and believe, and based thereon allege, that each of the
6 defendants acted in concert with each and every other defendant, intended to and did
7 participate in the events, acts, practices, and courses of conduct alleged herein, and was a
8 proximate cause of damage and injury thereby to Plaintiffs as alleged herein.

9 13. At all times herein mentioned, each defendant was the agent or employee of
10 each of the other defendants, and was acting within the course and scope of such agency or
11 employment.

12 **GENERAL ALLEGATIONS**

13 14. Plaintiff Granciano and members of the Non-Exempt Employee Class, as
14 defined below, were hired by Defendants to work at Southwind's corporate office, located in
15 Los Angeles, California.

16 15. At all relevant times, Defendants classified Plaintiff Granciano and members of
17 the Non-Exempt Employee Class as non-exempt employees.

18 16. Defendants had the authority to hire and terminate Plaintiffs and members of
19 the proposed Classes; to set work rules and conditions governing Plaintiffs' and the class
20 members' employment; and to supervise their daily employment activities.

21 17. Defendants directly hired and paid wages and benefits to Plaintiffs and
22 members of the proposed Classes.

23 18. At all relevant times, Defendants rounded Plaintiff Granciano's and members of
24 the Non-Exempt Employee Class' hours for purposes of calculating compensation in a manner
25 that consistently inured to the benefit of Defendants, thus failing to compensate Plaintiff
26 Granciano and members of the Non-Exempt Employee Class for all hours worked as required
27 by California law.
28

1 any time from March 11, 2010 through May 1, 2016 (“Non-Exempt Employee
2 Class”).

3 Plaintiffs Granciano and Contreras also seek to represent two subclasses
4 composed of and defined as follows:

5 All current and former non-exempt employees employed by Southwind Foods,
6 LLC, Staffpoint, LLC, and/or Alliance Professional Business Solutions, Inc.
7 who worked in any of Southwind Foods, LLC’s facilities located in California at
8 any time from March 11, 2013 through May 1, 2016 that were subject to
9 Defendants’ wage statement policies (“Wage Statement Subclass”).

10 All current and former non-exempt employees employed by Southwind Foods,
11 LLC, Staffpoint, LLC, and/or Alliance Professional Business Solutions, Inc.
12 who worked in any of Southwind Foods, LLC’s facilities located in California at
13 any time from March 11, 2010 through May 1, 2016 and who opt-in to the
14 FLSA subclass pursuant to 29 U.S.C. § 216(b) (“FLSA Subclass”).

15 24. Community of Interest: Plaintiffs allege that there is a well-defined community
16 of interest in the litigation and that the proposed Classes are easily ascertainable. Class
17 members may be identified from records maintained by Defendants in the course and scope of
18 their ordinary business and may be notified of the pendency of this action by mail or other
19 reasonable means, using a form of notice similar to that customarily used in class actions.

20 25. Numerosity: Plaintiffs are informed and believe, and based thereon allege, that
21 the class members are so numerous that joinder of all affected class members individually
22 would be impractical. The membership of the proposed Classes is unknown to Plaintiffs at this
23 time; however, the Classes are estimated to be well in excess of one hundred (100) individuals.

24 26. Commonality: This action involves common questions of law and fact, as the
25 action focuses on Defendants’ illegal practices and policies throughout the State of California,
26 which have been applied uniformly to all similarly-situated employees, in violation of the
27 California Labor Code, Wage Order 8, Business & Professions Code §§ 17200, *et seq.*, and the
28 FLSA. The questions of law and fact common to the Classes include, but are not limited to:

- a) Whether Defendants’ rounding policies and practices consistently inured to the benefit of Defendants;
- b) Whether Defendants’ failed to compensate Plaintiff Granciano and members of the Non-Exempt Employee Class for all hours worked;

- 1 c) Whether Defendants failed to pay all overtime compensation to Plaintiff
2 Granciano and members of the Non-Exempt Employee Class;
- 3 d) Whether Defendants failed to pay all overtime compensation to Plaintiffs
4 and members of the FLSA Subclass;
- 5 e) Whether Defendants failed to provide all meal periods to Plaintiff
6 Granciano and members of the Non-Exempt Employee Class as required
7 by California law;
- 8 f) Whether Defendants failed to pay all wages due to Plaintiff Granciano
9 and members of the Non-Exempt Employee Class within the required
10 time upon their discharge or resignation;
- 11 g) Whether Defendants failed to provide Plaintiffs Granciano and Contreras
12 and members of the Wage Statement Subclass with accurate, itemized
13 wage statements in compliance with Labor Code § 226;
- 14 h) Whether Defendants' conduct was willful or reckless;
- 15 i) Whether Defendants engaged in unfair business practices in violation of
16 Business & Professions Code §§ 17200, *et seq.*; and
- 17 j) The appropriate amount of damages, restitution, and/or monetary
18 penalties resulting from Defendants' violation of California law.

19 27. Typicality: Plaintiffs' claims are typical of the class members' claims because
20 Defendants subjected all members of the proposed Classes to similar and/or identical
21 violations of the California Labor Code, Wage Order 8, Business & Professions Code §§
22 17200, *et seq.*, and the FLSA.

23 28. Adequacy of Representation: Plaintiffs will fairly and adequately protect the
24 interests of the Classes and have retained counsel competent and experienced in class action
25 litigation in California and federal courts to ensure such protection. Plaintiffs have no interests
26 antagonistic to, or in conflict with, the Classes. Plaintiffs and their counsel will prosecute this
27 action vigorously for the benefit of the class members.
28

29. Superiority of Class Action: A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because joinder of all class members is impracticable. Class treatment will allow these similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and judicial system.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES FOR ALL HOURS WORKED

(By Plaintiff Granciano on behalf of the Non-Exempt Employee Class Against All Defendants)

30. The preceding allegations are incorporated by reference as though fully set out herein.

31. At all times relevant herein, pursuant to Labor Code § 1194 and Wage Order 8, Defendants were required to compensate Plaintiff Granciano and members of the Non-Exempt Employee Class for all hours worked.

32. As alleged herein, Plaintiff Granciano and members of the Non-Exempt Employee Class regularly performed work for which they were not compensated in violation of Labor Code § 1194 and Wage Order 8. Defendants failed to compensate Plaintiff Granciano and members of the Non-Exempt Employee class for all hours worked due to Defendants' rounding policy which consistently inures to the benefit of Defendants.

33. Defendants unlawful policies and practices have resulted in Defendants' failure to pay substantial unpaid wages for regular and/or overtime hours worked by Plaintiff Granciano and members of the Non-Exempt Employee Class and Defendants have violated, and continue to violate, Labor Code §§ 200, 204, 510, 1194, 1197, and 1198 and Wage Order 8.

34. As a result of the conduct alleged herein, Plaintiff Granciano and members of the Non-Exempt Employee Class have been deprived of regular and/or overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

3 (By Plaintiff Granciano on behalf of the Non-Exempt Employee Class Against All Defendants)

4 35. The preceding allegations are incorporated by reference as though fully set out
5 herein.

6 36. Pursuant to Labor Code §§ 510 and 1194 and Section 3 of the IWC Wage Order
7 No. 8, non-exempt employees are entitled to receive a higher rate of pay for all hours worked
8 in excess of eight (8) hours in a workday.

9 37. California Labor Code § 510, subdivision (a), states in relevant part:

10 Any work in excess of eight hours in one workday and any work in
11 excess of 40 hours in any one workweek and the first eight hours worked
12 in the seventh day of work in any one workweek and the first eight hours
13 worked on the seventh day of work in any one workweek shall be
14 compensated at the rate of no less than one and one-half times the
15 regular rate of pay for an employee. Any work in excess of 12 hours in
16 one day shall be compensated at the rate of no less than twice the regular
17 rate of pay for an employee. In addition, any work in excess of eight
18 hours on any seventh day of a workweek shall be compensate at the rate
19 of no less than twice the regular rate of pay of an employee.

20 38. Labor Code § 1198 further provides that “[t]he maximum hours of work and
21 standard condition of labor fixed by the commission shall be the maximum hours of work and
22 the standard conditions of labor for employees” and that “[t]he employment of any employee
23 for longer hours than those fixed by the order or under conditions of labor prohibited by the
24 order is unlawful.”

25 39. Defendants’ payroll policies and procedures required Plaintiff Granciano and
26 members of the Non-Exempt Employee Class to work in excess of eight hours in a workday
27 but Defendants did not pay Plaintiff Granciano and members of the Non-Exempt Employee
28 Class all overtime wages earned for this time.

40. In addition, Defendants’ payroll policies and procedures of rounding time as
well as automatically deducting 30 minutes of Plaintiff Granciano and members of the Non-

1 Exempt Employee Class' total time worked and attributing that to a meal period without pay
2 resulted in workdays in which Plaintiff Granciano and members of the Non-Exempt Employee
3 Class worked in excess of eight hours in a workday, but Defendants did not pay Plaintiff
4 Granciano and members of the Non-Exempt Employee Class all overtime wages earned for
5 this time.

6 41. As a result of Defendants' unlawful conduct, Plaintiff Granciano and members
7 of the Non-Exempt Employee Class have suffered damages in an amount subject to proof, to
8 the extent that they were not paid wages at an overtime rate of pay for all overtime hours
9 worked.

10 42. Pursuant to California Labor Code § 1194, Plaintiff Granciano and members of
11 the Non-Exempt Employee Class are entitled to recover the full amount of their unpaid
12 overtime wages, prejudgment interest, and attorneys' fees and costs.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL PERIODS**

15 (By Plaintiff Granciano on behalf of the Non-Exempt Employee Class Against All Defendants)

16 43. The preceding allegations are incorporated by reference as though fully set out
17 herein.

18 44. Labor Code § 226.7, subdivision (b), provides that "[a]n employer shall not
19 require an employee to work during a meal or rest or recovery period mandated pursuant to an
20 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
21 Commission, the Occupational Safety and Health Standards Board, or the Division of
22 Occupational Safety and Health."

23 45. Labor Code § 512 provides:

24 An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of
26 not less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 mutual consent of both the employer and employee. An employer may not
employ an employee for a work period of more than 10 hours per day
without providing the employee with a second meal period of not less than

1 30 minutes, except that if the total hours worked is no more than 12 hours,
2 the second meal period may be waived by mutual consent of the employer
 and the employee only if the first meal period was not waived.

3 46. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
4 amend working condition orders with respect to break periods, meal periods, and days of rest for
5 any workers in California consistent with the health and welfare of those workers.”

6 47. Section 11(A) of IWC Wage Order 8 provides that “Unless the employee is
7 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
8 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
9 only when the nature of the work prevents an employee from being relieved of all duty and when
10 by written agreement between the parties an on-the-job paid meal period is agreed to. The
11 written agreement shall state that the employee may, in writing, revoke the agreement at any
12 time.”

13 48. Pursuant to Section 11(B) of IWC Wage Order 8 and Labor Code § 226.7,
14 subdivision (c), which states “If an employer fails to provide an employee a meal or rest or
15 recovery period in accordance with a state law, including, but not limited to, an applicable statute
16 or applicable regulation, standard, or order of the Industrial Welfare Commission, the
17 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
18 Health, the employer shall pay the employee one additional hour of pay at the employee’s
19 regular rate of compensation for each workday that the meal or rest or recovery period is not
20 provided.”

21 49. On one or more occasions, Plaintiff Granciano and members of the Non-Exempt
22 Employee Class worked over five (5) hours per shift and therefore were entitled to a meal period
23 of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

24 50. Further, on one or more occasions, Plaintiff Granciano and members of the Non-
25 Exempt Employee Class worked over ten (10) hours per shift and therefore were entitled to a
26 second meal period of not less than 30 minutes.

27 51. Plaintiff Granciano and members of the Non-Exempt Employee Class did not
28 validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

1 52. Plaintiff Granciano and members of the Non-Exempt Employee Class did not
2 enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

3 53. As a matter of Defendants’ established company policy, Defendants failed to
4 always comply with the meal period requirements established by Labor Code §§ 226.7, 512, and
5 516, and Section 11 of IWC Wage Order 8, by failing to always provide Plaintiff Granciano and
6 members of the Non-Exempt Employee Class with a first and a second legally compliant meal
7 period or one additional hour of pay at the employee’s regular rate of compensation for each
8 workday that a meal period was not provided.

9 54. Therefore, Plaintiff Granciano and members of the Non-Exempt Employee Class
10 are entitled to damages in an amount equal to one (1) additional hour of pay at each employee’s
11 regular rate of compensation for each work day that the meal period was not provided, in a sum
12 to be proven at trial.

13 55. Pursuant to Labor Code § 218.6 and Civil Code § 3287, Plaintiff Granciano,
14 individually, and on behalf of all members of the Non-Exempt Employee Class, seeks recovery
15 of pre-judgment interest on all amounts recovered herein.

16 56. Pursuant to Labor Code § 218.5, Plaintiff Granciano, individually, and on behalf
17 of all members of the Non-Exempt Employee Class, requests that the Court award reasonable
18 attorneys’ fees and costs incurred in this action.

19 **FOURTH CAUSE OF ACTION**

20 **VIOLATION OF THE FAIR LABOR STANDARDS ACT (“FLSA”), 29 U.S.C. 201, et seq.**

21 **(By Plaintiffs Granciano and Contreras on behalf of the FLSA Subclass Against All**
22 **Defendants)**

23 57. The preceding allegations are incorporated by reference as though fully set out
24 herein.

25 58. At all times relevant to this action, Plaintiffs and members of the FLSA Subclass
26 were employed by Defendants within the meaning of the FLSA.

27 59. At all times relevant to this action, Plaintiffs, members of the FLSA Subclass, and
28 Defendants were engaged in commerce within the meaning of 29 U.S.C. §§206(a) and 207(a).

1 60. Pursuant to 29 U.S.C. §206(a)(1), “Every employer shall pay to each of his
2 employees who in any workweek is engaged in commerce or in the production of goods for
3 commerce, or is employed in an enterprise engaged in commerce or in the production of goods
4 for commerce, wages at the following rates: (C) \$7.25 an hour, beginning (July 24, 2009).”

5 61. Pursuant to 29 U.S.C. §207(a)(1), “...[N]o employer shall employ any of his
6 employees who in any workweek is employed in an enterprise engaged in commerce or in the
7 production of goods for commerce, for a workweek longer than forty hours unless such
8 employee receives compensation for his employment in excess of the hours above specified at a
9 rate not less than one and one-half times the regular rate at which he is employed.”

10 62. Defendants, as a matter of established company policy and procedure,
11 consistently and willfully failed to pay Plaintiffs and members of the FLSA Subclass at the
12 applicable minimum hourly rate for every compensable hour of labor they performed in violation
13 of 29 U.S.C. §206(a).

14 63. Defendants, as a matter of established company policy and procedure,
15 consistently and willfully failed to pay Plaintiffs and members of the FLSA Subclass overtime
16 compensation at rates not less than one and one-half times the regular rate of pay for each hour
17 worked in excess of forty hours in a workweek, in violation of 29 U.S.C. §207(a)(1).

18 64. Plaintiffs and members of the FLSA Subclass are not exempt from overtime,
19 including under any bona fide executive, administrative, or professional exemption or in the
20 capacity of outside salesman or any other exemption pursuant to 29 U.S.C. §213(a) or (b).

21 65. Due to Defendants’ FLSA violations as described herein, Plaintiffs, pursuant to
22 29 U.S.C. §216(b), are entitled to recover from Defendants, jointly and severally, their unpaid
23 minimum wages and unpaid overtime compensation, an additional equal amount as liquidated
24 damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable
25 attorneys’ fees and costs of the action.
26
27
28

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION OR RESIGNATION**

3 (By Plaintiff Granciano on behalf of the Non-Exempt Employee Class Against All Defendants)

4 66. The preceding allegations are incorporated by reference as though fully set out
5 herein.

6 67. Pursuant to Labor Code §§ 201 and 202, if an employer discharges an employee,
7 the wages earned and unpaid at the time of discharge are due and payable immediately, and if
8 an employee quits his or her employment, his or her wages shall become due and payable not
9 later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)
10 hours' notice of his or her intention to quit, in which case the employee is entitled to his or her
11 wages at the time of quitting.

12 68. During the relevant time period, Defendants intentionally and willfully failed to
13 pay Plaintiff Granciano and certain members of the Non-Exempt Employee Class all wages,
14 earned and unpaid, within seventy-two (72) hours of Plaintiff Granciano and certain members
15 of the Non-Exempt Employee Class leaving Defendants' employ.

16 69. Defendants' failure to pay Plaintiff Granciano and certain members of the Non-
17 Exempt Employee Class all wages, earned and unpaid, within seventy-two (72) hours of them
18 leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

19 70. Pursuant to Labor Code § 203, if an employer willfully fails to pay, without
20 abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is
21 discharged or who resigns, the wages of the employee shall continue as a penalty from the due
22 date thereof at the same rate until paid or until an action has commenced; but the wages shall
23 not continue for more than thirty (30) days.

24 71. Plaintiff Granciano and certain members of the Non-Exempt Employee Class
25 are entitled to recover the statutory penalty for each day they were not paid, at their regular
26 hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

3 (By Plaintiff Granciano and Plaintiff Contreras on behalf of the Wage Statement Subclass

4 Against All Defendants)

5 72. The preceding allegations are incorporated by reference as though fully set out
6 herein.

7 73. Pursuant to California Labor Code § 226(a), every employer shall furnish each
8 of its employees an accurate itemized statement in writing showing (1) gross wages earned; (2)
9 total hours worked by the employee; (3) the number of piece-rate units earned and any
10 applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided
11 that all deductions made on written orders of the employee may be aggregated and shown as
12 one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
13 paid; (7) the name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number; (8) the name
15 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
16 during the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee.

18 74. Defendants intentionally and willfully failed to furnish Plaintiffs and members
19 of the Wage Statement Subclass with wage statements accurately listing the total number of
20 hours worked, the inclusive dates of the period for which the employee was paid, and the
21 name and address of the legal entity that is the employer.

22 75. Plaintiffs and members of the Wage Statement Subclass have suffered injury as
23 a result of Defendants' knowing and intentional violation of California Labor Code § 226(a),
24 as they could not and cannot promptly and easily determine from the wage statements alone
25 the total number of hours worked, the inclusive dates of the period for which the employee was
26 paid, and the name and address of the legal entity that is the employer.

27 76. Plaintiffs and members of the Wage Statement Subclass are entitled to
28 injunctive relief and to recover from Defendants the greater of their actual damages caused by

1 Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not to exceed
2 \$4,000 per employee, as well as costs of suit and reasonable attorneys' fees pursuant to Labor
3 Code § 226(e).

4 **SEVENTH CAUSE OF ACTION**

5 **UNLAWFUL, DECEPTIVE, AND/OR UNFAIR BUSINESS PRACTICES**

6 (By Plaintiff Granciano on behalf of the Non-Exempt Employee Class, and Plaintiffs Granciano
7 and Contreras on behalf of the Wage Statement Subclass and the FLSA Subclass, Against All
8 Defendants)

9 77. The preceding allegations are incorporated by reference as though fully set out
10 herein.

11 78. Business & Professions Code § 17200 provides that "unfair competition shall
12 mean and include any unlawful, unfair, or fraudulent business act or practice."

13 79. Defendants are "persons" as defined under Business & Professions Code §
14 17201.

15 80. Defendants' failure to provide compensation for all hours worked, in violation
16 of the California Labor Code and Wage Order 8, as alleged above, constitutes unlawful and/or
17 unfair activity prohibited by Business & Professions Code §§ 17200, *et seq.*

18 81. Defendants' failure to timely provide compensation for all hours worked upon
19 termination or resignation, in violation of the California Labor Code and Wage Order 8, as
20 alleged above, constitutes unlawful and/or unfair activity prohibited by Business & Professions
21 Code §§ 17200, *et seq.*

22 82. Defendants' failure to provide accurate wage statements, in violation of the
23 California Labor Code and Wage Order 8, as alleged above, constitutes unlawful and/or unfair
24 activity prohibited by Business & Professions Code §§ 17200, *et seq.*

25 83. Defendants' business acts and omissions alleged herein constitute unfair trade
26 practices, in violation of Business & Professions Code §§ 17200, *et seq.*

27 84. Plaintiffs and the members of the Classes have suffered injury in fact and have
28 lost money or property as a result of Defendants' unfair competition as alleged herein.

1 85. By and through the unfair and unlawful business practices described herein,
2 Defendants have obtained valuable property, money and services from Plaintiffs and the
3 members of the Classes and have deprived Plaintiffs and members of the Classes of valuable
4 rights and benefits guaranteed by the law, all to the detriment of Plaintiffs and the members of
5 the Classes.

6 86. By violating the California Labor Code and Wage Order 8, and by failing to
7 take appropriate measures to address these violations, Defendants' acts constitute *per se* acts of
8 unlawful, deceptive, and/or unfair business practices under Business & Professions Code §§
9 17200, *et seq.*

10 87. As a direct, foreseeable, and proximate result of Defendants' acts and omissions
11 alleged herein, Plaintiffs and the members of the Classes have been deprived of substantial
12 wages to which they are entitled by law, all redounding to the unjust enrichment of
13 Defendants. Accordingly, Plaintiffs and the members of the Classes are entitled to restitution
14 of such wages as is specifically authorized by Business & Professions Code § 17203.

15 88. Continuing commission of the acts alleged above will irreparably harm
16 Defendants' current employees for which harm they have no plain, speedy, or adequate remedy
17 at law. Accordingly, Defendants must be enjoined from further engaging in these practices as
18 more fully set forth below.

EIGHTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA") FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(By Plaintiff Contreras Against All Defendants)

23 89. The preceding allegations are incorporated by reference as though fully set out
24 herein.

25 90. Pursuant to California Labor Code § 226(a), every employer shall furnish each
26 of its employees an accurate itemized statement in writing showing (1) gross wages earned; (2)
27 total hours worked by the employee; (3) the number of piece-rate units earned and any
28 applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided

1 that all deductions made on written orders of the employee may be aggregated and shown as
2 one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
3 paid; (7) the name of the employee and only the last four digits of his or her social security
4 number or an employee identification number other than a social security number; (8) the name
5 and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect
6 during the pay period and the corresponding number of hours worked at each hourly rate by the
7 employee.

8 91. Defendants intentionally and willfully failed to furnish Plaintiff Contreras and
9 other aggrieved employees with wage statements accurately listing the inclusive dates of the
10 period for which the employee is paid and the name and address of the legal entity that is the
11 employer.

12 92. Plaintiff Contreras is an aggrieved employee of Defendants as defined in Labor
13 Code section 2699, subdivision (a), which provides that any provision of the Labor Code that
14 provides for a civil penalty to be assessed and collected by the Labor and Workforce
15 Development Agency (or any of its departments, divisions, commissions, board agencies or
16 employees), may, as an alternative, be recovered through a civil action brought by an aggrieved
17 employee on behalf of himself or herself and other current or former employees.

18 93. Labor Code section 2699.5 provides that section 2699.3, subdivision (a), applies
19 to any alleged violation of section 226, subdivision (a).

20 94. Labor Code section 226.3 provides for civil penalties for violations of Labor Code
21 section 226, subdivision (a), in the amount of \$250 for each aggrieved employee per pay period
22 for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent
23 violation.

24 95. Plaintiff Contreras, individually, and on behalf of all other aggrieved employees,
25 seeks and is entitled to twenty-five percent (25%) of all penalties obtained under Labor Code
26 section 2699, with the remaining seventy-five (75%) of all penalties obtained to be allocated to
27 the Labor and Workforce Development Agency for education of employers and employees about
28 their rights and responsibilities under the Labor Code.

1 96. Labor Code section 2699.3(a) states in pertinent part: “A civil action by an
2 aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any
3 provision listed in Section 2699.5 shall commence only after the following requirements have
4 been met: (1) The aggrieved employee or representative shall give written notice by certified
5 mail to the Labor and Workforce Development Agency and the employer of the specific
6 provisions of this code alleged to have been violated, including the facts and theories to support
7 the alleged violation.”

8 97. Here, Plaintiff Contreras alleges violations of at least one provision listed in
9 Labor Code section 2699.5. As such, Labor Code section 2699.3, subdivision (a) applies to this
10 action, and Labor Code section 2699.3, subdivisions (b) and (c) do not apply to this action.

11 98. On June 3, 2015, Plaintiff Contreras complied with Labor Code section 2699.3,
12 subdivision (a) by giving written notice by certified mail to the Labor and Workforce
13 Development Agency (“LWDA”) and Defendants of the specific provisions of the Labor Code
14 alleged to have been violated, including the facts and theories to support the alleged violation.
15 Attached hereto as Exhibit “A” is a true and correct copy of Plaintiff Contreras’ LWDA letter.

16 99. Labor Code section 2699.3, subdivision (a) further states in pertinent part: “(2)(A)
17 The agency shall notify the employer and the aggrieved employee or representative by certified
18 mail that it does not intend to investigate the alleged violation within 30 calendar days of the
19 postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if
20 no notice is provided within 33 calendar days of the postmark date of the notice given pursuant
21 to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section
22 2699.”

23 100. As of July 6, 2015, no notice has been provided by the LWDA of its intention to
24 investigate Defendants’ alleged violations, which marks at least thirty-three (33) calendar days of
25 the postmark date of Plaintiff Contreras’ June 3, 2015 notice letter.

26 101. As such, Plaintiff Contreras has complied with Labor Code section 2699.3,
27 subdivision (a) and is authorized to commence a civil action that includes a cause of action
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1 pursuant to Labor Code section 2699 in a representative capacity on behalf of himself and all
2 other aggrieved employees of Defendants.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated,
5 hereby prays for relief as follows:

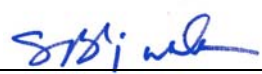
- 6 1. For an order certifying this action as a class action pursuant to Code of Civil
7 Procedure § 382 and representative action pursuant to PAGA;
- 8 2. For general damages in an amount within the jurisdictional limits of this Court,
9 according to proof;
- 10 3. For liquidated damages pursuant to 29 U.S.C. §216(b), according to proof;
- 11 4. For loss of earnings, according to proof;
- 12 5. For restitution of all monies due to Plaintiff and the class members;
- 13 6. For interest pursuant to Labor Code §§ 218.6 and 1194;
- 14 7. For penalties pursuant to Labor Code §§ 203, 226.3, 558, and 2699, and
15 applicable Industrial Welfare Commission Wage Orders;
- 16 8. For reasonable attorneys' fees pursuant to Labor Code §§ 218.5, 226(e) and
17 1194, Code of Civil Procedure §§ 1021.5 and 1032-1033.5, and 29 U.S.C. §216(b);
- 18 9. For costs of suit including all expenses incurred herein pursuant to Labor Code
19 §§ 218.5, 226(e), and 1194, and 29 U.S.C. §216(b); and
- 20 10. For all other relief this Court deems just and proper.

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DATED: May 31, 2018

Respectfully submitted,

BOUCHER LLP

By: 
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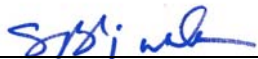
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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demands a trial by jury on all issues so triable.

DATED: May 31, 2018

BOUCHER LLP

By: 
RAYMOND P. BOUCHER
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