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MAY 10 2021

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SACRAMENTO**

16 **PHIL WASHINGTON, JONATHAN**
17 **SANCHEZ, and CARLOS**
18 **SANDOVAL, individually and on**
19 **behalf of all others similarly situated,**

Plaintiffs,

vs.

21 **KATERRA, INC., a Delaware**
22 **Corporation; and**
23 **DOES 1 to 100, inclusive,**

Defendant.

Case No. 34-2020-00278086

CLASS ACTION

**PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DAMAGES:**

1. Failure to Pay Overtime Wages
2. Meal Period Violations
3. Rest Period Violation
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition
7. Failure to Reimburse Expenses
8. Failure to Pay Minimum Wages
9. Private Attorneys General Act
10. Failure to Pay Vacation Wages

JURY TRIAL DEMANDED

1 Plaintiffs PHIL WASHINGTON, JONATHAN SANCHEZ and CARLOS SANDOVAL
2 ("Plaintiffs") hereby file this Complaint against Defendants KATERRA, INC., a Delaware Corporation,
3 and DOES 1 to 100 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and
4 believe, and on the basis of that information and belief, allege as follows:

5 **INTRODUCTION**

6 1. This is a class action and representative Private Attorneys General Act action brought by
7 Plaintiffs on behalf of themselves and similarly situated employees (sometimes hereinafter referred to as
8 "Plaintiffs") seeking unpaid minimum wages, unpaid overtime, meal period premiums, rest period
9 premiums, reimbursement expenses, unpaid vacation wages and statutory and civil penalties for
10 violations of the California Labor Code.

11 **PARTIES**

12 2. Plaintiffs are individuals over the age of eighteen (18) and are now and/or at all times
13 mentioned in this Complaint were residents of the State of California.

14 3. Plaintiffs are informed and believe and thereupon allege that KATERRA, INC. is now
15 and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator
16 of an industry, business and/or facility licensed to do business and actually doing business in the State of
17 California.

18 4. Defendants DOES 1 through 100 are persons or entities whose true names and identities
19 are presently unknown to Plaintiffs, and who therefore are sued by such fictitious names. Plaintiffs are
20 informed and believe and on that basis allege that each of the fictitiously named Defendants are
21 responsible in some manner for the matters alleged herein, and are jointly and severally liable to
22 Plaintiffs. Plaintiffs will seek leave of court to amend this complaint to state the true names and
23 capacities of such fictitiously named Defendants when ascertained.

24 5. At all times mentioned herein, each Defendant was the agent or employee of each of the
25 other Defendants and was acting within the course and scope of such agency or employment. The
26 Defendants are jointly and severally liable to Plaintiffs.

27 6. Defendants, and each of them, are now and or at all times mentioned in this Complaint
28 were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting

1 within the course and scope of, and in pursuance of said joint venture, partnership and common
2 enterprise. Defendants are also "joint employers" as they controlled the terms and conditions of
3 Plaintiffs' employment.

4 7. Defendants, and each of them, are now and or at all times mentioned in this Complaint
5 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

6 8. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices,
7 wrongs, complaints, injuries and/or damages alleged in this Complaint.

8 JURISDICTION AND VENUE

9 9. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
10 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
11 Labor Code, California Business and Professions Code, and Wage Order No. 16-200.

12 10. Venue is proper pursuant to Civil Procedure Code sections 395(a) and 395.5, in that some
13 of the wrongful acts and violations of law asserted herein occurred within Sacramento County and
14 Defendants' obligation to pay some of the wages at issue arose in Sacramento County pursuant to
15 *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

16 11. Plaintiff Washington and Plaintiff Sanchez sought permission pursuant to Labor Code
17 section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendant Kattera as Private
18 Attorney Generals on behalf of themselves and other similarly situated employees. Pursuant to Labor
19 Code section 2699.3, Plaintiff Washington and Plaintiff Sanchez gave written notice via online
20 submission to the Labor and Workforce Development Agency ("LWDA") on approximately April 14,
21 2020. On September 3, 2020 and February 16, 2021, Plaintiffs Washington and Sanchez submitted
22 amended notices via online submission to the LWDA to include additional violation claims and theories.
23 In the notice and amendments thereto, Plaintiffs Washington and Sanchez provided facts and legal bases
24 for their claims within the notices to the LWDA on all violations asserted under the Private Attorneys
25 General Act cause of action. Plaintiff Washington and Plaintiff Sanchez submitted the \$75.00 filing fee.
26 The notices were also sent via certified mail to Defendant Kattera on the same day. More than sixty-
27 five (65) days have passed since Plaintiff Washington and Plaintiff Sanchez provided the most recent
28 notice to the LWDA. To date, the LWDA has not provided any response to their notice

1 correspondences. Accordingly, Plaintiff Washington and Plaintiff Sanchez are informed and believe
2 that they have exhausted all administrative remedied pursuant to the Private Attorneys General Act and
3 may bring this action on behalf of themselves and all similarly situated employees. See Cal. Labor Code
4 § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19
5 (2005).

6 12. Plaintiff Sandoval sought permission pursuant to Labor Code section 2699 *et seq.* to
7 pursue the claims set forth in this Complaint against Defendant Kattera as Private Attorney Generals on
8 behalf of himself and other similarly situated employees. Pursuant to Labor Code section 2699.3,
9 Plaintiff Sandoval gave written notice via online submission to the Labor and Workforce Development
10 Agency ("LWDA") on approximately November 18, 2019. Plaintiff Sandoval submitted an amended
11 notice via online submission to the LWDA on March 9, 2021 to include an additional violation claims
12 and theories. Plaintiff Sandoval provided facts and legal bases for his claims within the notices to the
13 LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
14 Sandoval submitted the \$75.00 filing fee. The notices were also sent via certified mail to Defendants on
15 the same day. More than sixty-five (65) days have passed since Plaintiff Sandoval provided the most
16 recent notice to the LWDA. To date, the LWDA has not provided any response to their notice
17 correspondences. Accordingly, Plaintiff Sandoval is informed and believes that he has exhausted all
18 administrative remedied pursuant to the Private Attorneys General Act and may bring this action on
19 behalf of himself and all similarly situated employees. See Cal. Labor Code § 2699.3(a)(2)(A), (c)(3);
20 *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

21 CLASS ALLEGATIONS

22 13. Plaintiffs bring the First through Eighth and Tenth Causes of Action on behalf of
23 themselves and all others similarly situated as a class action pursuant to California Code of Civil
24 Procedure § 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

25 All current or former non-exempt, hourly employees who performed work
26 for Defendants in California from May 6, 2016 to the present.

27 14. This action may be maintained as a class action because there is a well-defined
28 community of interests in the litigation and the proposed class is easily ascertainable.

1 15. Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members
2 is impracticable. While the exact number of class members is unknown to Plaintiffs at this time,
3 Plaintiffs are informed and believes that more than approximately fifty (50) individuals were subjected
4 to the practices outlined in this Complaint relating to the First through Eighth and Tenth Causes of
5 Action.

6 16. Common Questions Predominate: Common questions of law and fact exist as to all
7 members of the Plaintiff Class and predominate over questions that affect only individual class
8 members. These common questions of law and fact include, without limitation, the following:

- 9 (1) Whether Defendants had a policy and/or practice in place to calculate the Plaintiff
10 Class' regular rates of pay taking into account all per diem wages;
11 (2) Whether Defendants authorized and permitted to Plaintiff Class to take a second meal
12 period when they worked shifts longer than ten hours;
13 (3) Whether Defendants had a policy and/or practice in place to calculate the Plaintiff
14 Class' overtime rates of pay taking into account all per diem wages;
15 (4) Whether Defendants had a policy and/or practice in place to calculate the Plaintiff
16 Class' sick leave pay rates of pay taking into account all per diem wages;
17 (5) Whether Defendants authorized and permitted to Plaintiff Class to take a third rest
18 period when they worked shifts longer than ten hours;
19 (6) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
20 the Plaintiff Class overtime wages for all hours worked in excess of eight (8) hours in
21 a day;
22 (7) Whether as a result of Defendants' payroll policies, or lack thereof, they failed to pay
23 the Plaintiff Class overtime wages for all hours worked in excess of forty (40) hours
24 in a week;
25 (8) Whether as a result of Defendants' payroll policies, or lack thereof, the Plaintiff Class
26 were given paystubs that did not comply with California Labor Code section 226;
27 (9) Whether as a result of Defendants' payroll policies, or a lack thereof, the Plaintiff
28 Class received all wages, due and owing, at the time of their termination/separation;

- 1 (10) Whether Defendants had a policy and/or practice to reimburse the Plaintiff Class for
2 expenses they incurred;
- 3 (11) Whether Defendants had a policy and/or practice that failed to pay the Plaintiff Class
4 all accrued but unused vacation wages;
- 5 (12) Whether Defendants had a policy and/or practice to pay the Plaintiff Class all
6 minimum wages;
- 7 (13) Whether Defendants utilized an unlawful PTO policy;
- 8 (14) Whether Defendants had a policy and/or practice to round the Plaintiff Class' hours
9 worked that was not neutral on its face or as applied; and
- 10 (15) Whether Defendants had a policy and/or practice of requiring the Plaintiff Class to
11 travel in their personal vehicles with company tools or supplies during their commute
12 time.

13 17. Typicality: Plaintiffs' claims are typical of the claims for the members of the Plaintiff
14 Class. Plaintiffs and all members of the Plaintiff Class were non-exempt, hourly employees who
15 were not compensated for at least the minimum wage for all hours worked, including, but not limited
16 to, off the clock work, meal and rest period premiums, overtime and double time premiums, and paid
17 sick time as a result of Defendant's rounding policy and practice and failing to take into account all
18 per diem wages when calculating Plaintiffs' and similarly situated employees' regular rates of pay.
19 Plaintiffs and the Plaintiff Class were also not reimbursed for their expenses. Plaintiffs and the
20 Plaintiff Class were not paid all accrued but unused vacation wages owed to them. Additionally, as a
21 result of Defendant's inaccurate calculations and compensation, Plaintiffs and the Plaintiff Class
22 were not provided legally compliant paystubs and did not receive all wages due to them upon their
23 separation or termination.

24 18. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of
25 the Plaintiff Class. Plaintiffs have no interests which are adverse to those of absent class members.
26 Additionally, Plaintiffs have retained counsel who has substantial experience in complex civil
27 litigation and employment law matters.
28

19. Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy as there is no plain, speedy, or adequate remedy other than by maintenance of this class action. The critical issues in the First through Eighth and Tenth Causes of Action revolve around the legal requirement to pay employees for all regular, overtime, and double time hours worked, accrued but unused vacation wages, reimbursing expenses incurred, and meal and rest period premiums. All other issues in the First through Eighth and Tenth Causes of Action in this case, *e.g.* wage statement violations, waiting time penalties, and unfair competition derive from this requirement. Failure to maintain this suit as a class action would result in multiple suits involving the same legal analysis and factual scenarios. Furthermore, the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation relatively high, and such costs may make it difficult or impossible for individual members of the class to redress the wrongs done to them.

20. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FACTUAL ALLEGATIONS

21. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 20 as though fully set forth herein.

22. Plaintiff Phil Washington worked for Defendants from approximately May 1, 2017 to March 20, 2020 as a non-exempt, hourly employee. Plaintiff Jonathan Sanchez worked for Defendants from approximately August 6, 2019 to March 20, 2020 as a non-exempt, hourly employee. Plaintiff Carlos Sandoval worked for Defendants from approximately February 7, 2019 to September 15, 2019 as a non-exempt hourly employee. Plaintiffs and similarly situated employees regularly worked over eight (8) hours in a day or forty (40) hours in a week, incurring overtime and double time hours worked. Defendants required Plaintiffs and similarly situated employees to use their personal cell phones to clock in and out using Defendants' app as well as communicate with the office when working at a client job site. Defendants paid Plaintiffs and similarly situated employees per diem wages for work performed out of town (i.e., outside of a particular geographical area), but failed to incorporate the value of those

1 per diem wages into Plaintiffs' and similarly situated employees' regular rates of pay for the purpose of
2 calculating overtime and double time wages and paid sick time.

3 23. Defendants had a rounding policy that applied to Plaintiffs and similarly situated
4 employees that was not neutral on its face or as applied. Defendants' rounding policy resulted in
5 Plaintiffs and similarly situated employees being systematically underpaid their wages. Furthermore,
6 Defendants did not pay Plaintiffs and similarly situated employees for off the clock work, including, but
7 not limited to, time spent driving to the first job site or back from the last job site despite maintaining
8 control over Plaintiffs and similarly situated employees by requiring them to travel with company tools
9 or supplies. As a result, Defendants failed to pay Plaintiffs and similarly situated employees all
10 overtime, double time, and minimum wages owed to them.

11 24. Defendants also failed to authorize and permit Plaintiffs and similarly situated employees
12 to timely take all uninterrupted thirty (30) minute meal periods and ten (10) minute rest periods they
13 were entitled to under California law as a result of inadequately training and informing employees
14 regarding their rights to timely uninterrupted rest and meal periods and to premium pay; requiring
15 Plaintiffs and similarly situated employees to remain on site for any meal and rest periods; failing to
16 allow Plaintiffs and similarly situated employees to take timely rest and meal periods due to inadequate
17 staffing; management's failure to enforce company rest and meal period policies; and failing to
18 authorize or permit second meal periods and third rest periods when they worked over ten hours in one
19 shift. Defendants failed to maintain records of the total daily hours worked including time clocked for
20 any meal periods. Defendants failed to pay Plaintiffs and similarly situated employees missed meal and
21 rest period premiums owed to them.

22 25. Defendants utilized a paid time off ("PTO") policy that incorporated a forfeiture
23 provision for employees working six (6) months or less. Under the policy, employees with less than one
24 (1) year of service accrue 1.92 hours of PTO each week, roughly equivalent to 100 PTO hours per year.
25 However, the policy also stated that upon leaving the company, employees who had been employed for
26 six or more months would be paid any unused PTO that has been accrued. As a result, employees who
27 worked less than 6 months did not have all the accrued PTO paid out to them at the time of their
28 termination.

1 26. Defendants failed to provide Plaintiffs and similarly situated employees with legally
2 compliant paystubs. The paystubs Defendants issued did not itemize the accurate regular, overtime, or
3 double time rates of pay, accurate missed meal and rest period premiums owed, accurate total hours
4 worked, and gross and net wages earned. As a result, Plaintiffs and similarly situated employees were
5 not able to determine the total wages owed to them from their paystubs alone.

6 27. As a result of Defendants' policies, at the time of their termination or separation,
7 Plaintiffs and similarly situated employees had amounts for overtime, double time, sick leave pay,
8 vacation wages, and meal and rest period premiums owing to them.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**
11 **FAILURE TO PAY OVERTIME WAGES**
 (As to all Defendants)

12 28. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 27 as though fully
13 set forth herein.

14 29. During the period Plaintiffs and similarly situated employees were employed by
15 Defendants, Defendants were required to compensate them one and one-half (1½) times the regular rate
16 of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two
17 (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g., Cal.*
18 *Labor Code §§ 510, 1194.*

19 30. Plaintiffs and similarly situated employees frequently worked in excess of eight (8) hours
20 per day and/or forty (40) hours per week while employed by Defendants; however, Defendants
21 incorrectly calculated Plaintiffs' and similarly situated employees' regular and overtime pay, wholly
22 failing to pay the value of overtime wages attributable to the additional per diem wages Plaintiffs and
23 similarly situated employees were paid. This resulted in Defendants not compensating Plaintiffs and
24 similarly situated employees for all overtime premiums owed.

25 31. Plaintiffs and similarly situated employees were non-exempt employees under the
26 administrative, executive, or professional exemptions, the applicable Wage Order, and California Labor
27 Code section 510.
28

1 32. Defendants' conduct described herein violates California Labor Code sections 510, 1194,
2 and Wage Order No. 16. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated
3 employees have been damaged and deprived of overtime wages. Plaintiffs and similarly situated
4 employees now seek these wages, as well as attorney's fees and costs and interest pursuant to California
5 Labor Code section 1194.

6
7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROVIDE MEAL PERIODS OR PAYMENT IN LIEU THEREOF**
 (As to all Defendants)

9 33. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 32 as though fully
10 set forth herein.

11 34. An employer must provide an employee meal and rest periods in accordance with the
12 applicable Wage Order, and Labor Code sections 226.7 and 512.

13 35. Labor Code section 226.7, 512 and Wage Order 16, sections 10(A) require an employer
14 to provide a duty-free meal period of not less than 30 minutes for each work period of more than five (5)
15 hours. If an employee works longer than 10 hours in a workday, the employer must provide a second
16 meal period. See Wage Order 16, section 10(B).

17 36. An employer must pay an employee an additional one hour of pay at his or her regular
18 rate of pay if the employee is not provided the legally required meal period.

19 37. Plaintiffs allege that Defendants did not authorize and permit Plaintiff and similarly
20 situated employees to take all meal periods owed to them, including a second meal period when
21 Plaintiffs and similarly situated employees worked over ten hours in a shift.

22 38. As a proximate cause of Defendants' actions, Plaintiffs and similarly situated employees
23 are entitled to the full value of the meal period premiums that have not yet been paid. See Cal. Labor
24 Code §226.7 and Wage Order 16-2001, section 10(B).

25 **THIRD CAUSE OF ACTION**
26 **FAILURE TO PROVIDE REST PERIODS OR PAYMENT IN LIEU THEREOF**
 (As to all Defendants)

27 39. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 38 as though fully
28 set forth herein.

1 40. An employer must provide an employee rest periods in accordance with the applicable
2 Wage Order and Labor Code section 226.7.

3 41. Wage Order 16-2001, section 11(A) requires every employer to authorize and permit
4 employees to take rest periods. For each four (4) hours or fraction thereof worked by the employee, the
5 employee shall receive ten (10) minutes net rest time. *See* Wage Order 16-2001 § 11(A).

6 42. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly
7 situated employees all rest periods owed to them, including a third rest period when they worked over
8 ten hours in a shift.

9 43. As a proximate cause of Defendants' failure to "authorize and permit" rest periods,
10 Plaintiffs and similarly situated employees are entitled to one (1) hour of pay at their regular rate of
11 compensation for each rest period not provided, as a wage, from three (3) years of the filing of this
12 Complaint. *See* Cal. Lab. Code § 226.7; IWC Wage Order 16-2001 § 11(B)

13 44. Plaintiffs and similarly situated employees suffered damages proximately caused by
14 Defendants, and each of their agent's, as stated in the section below entitled "DAMAGES," which is
15 incorporated here to the extent pertinent as if set forth here in full.

16 **FOURTH CAUSE OF ACTION**
17 **WAGE STATEMENT VIOLATIONS**
18 **(As to all Defendants)**

19 45. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 44 as though fully
20 set forth herein.

21 46. According to Labor Code section 226(a), an employer must provide an itemized
22 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

23 *(1) gross wages earned, (2) total hours worked by the employee, except for*
24 *any employee whose compensation is solely based on a salary and who is*
25 *exempt from payment of overtime under subdivision (a) of Section 515 or*
26 *any applicable order of the Industrial Welfare Commission, (3) the number*
27 *of piece-rate units earned and any applicable piece rate if the employee is*
28 *paid on a piece-rate basis, (4) all deductions, provided that all deductions*
 made on written orders of the employee may be aggregated and shown as
 one item, (5) net wages earned, (6) the inclusive dates of the period for
 which the employee is paid, (7) the name of the employee and the last four
 digits of his or her social security number or an employee identification
 number other than a social security number, (8) the name and address of
 the legal entity that is the employer and, if the employer is a farm labor
 contractor, as defined in subdivision (b) of Section 1682, the name and

1 address of the legal entity that secured the services of the employer, and (9)
2 all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the
4 employee. The deductions made from payment of wages shall be recorded
5 in ink or other indelible form, properly dated, showing the month, day, and
6 year, and a copy of the statement and the record of the deductions shall be
7 kept on file by the employer for at least three years at the place of
8 employment or at a central location within the State of California

9 47. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an
10 itemized statement or failed to provide an accurate and complete itemized statement showing the
11 requirements set forth in Labor Code section 226(a). Specifically, Defendants did not accurately
12 itemize total hours worked, all applicable hourly rates, missed meal and rest period premiums,
13 correct sick leave pay rates or the corresponding number of hours worked at each hourly rate. As a
14 result, Plaintiffs and similarly situated employees were not able to promptly and easily determine
15 their total hours worked from their paystubs alone. Additionally, Plaintiffs and similarly situated
16 employees suffered confusion over whether they received all wages owed and were prevented from
17 effectively challenging information on their wage statements.

18 48. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiffs
19 and similarly situated employees were damaged as stated in the section below entitled
20 "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

21 **FIFTH CAUSE OF ACTION**
22 **WAITING TIME PENALTIES**
23 **(As to all Defendants)**

24 49. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 48 as though fully
25 set forth herein.

26 50. An employer must pay an employee who is terminated all unpaid wages immediately
27 upon termination. Labor Code § 201.

28 51. An employer must pay an employee who resigns all unpaid wages within seventy-two
(72) hours of resignation. Labor Code § 202.

52. Plaintiffs and similarly situated employees did not receive all minimum and overtime
wages, PTO/vacation wages, meal and rest premiums, and sick leave pay owed to them at their
separation or termination.

1 53. An employer who willfully fails to pay an employee wages in accordance with Labor
2 Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days.
3 Labor Code § 203.

4 54. Defendants knew of their obligation to pay Plaintiffs and similarly situated individuals
5 for all hours worked, including minimum and overtime wages, sick leave pay, accrued vacation wages
6 and meal and rest period premiums because their time and pay records showed that these wages were
7 being earned but were not being compensated or not being compensated correctly due to the failure to
8 correctly calculate the regular rate of pay. Thus, Defendants' failure to pay for all hours worked was in
9 complete disregard of their obligations. Such conduct shows Defendants' knowledge of its obligation to
10 pay all wages owed upon termination and willful refusal.

11 55. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
12 have been damaged and deprived of their wages and thereby seek waiting time penalties due.

13 **SIXTH CAUSE OF ACTION**
14 **UNFAIR COMPETITION**
 (As to all Defendants)

15 56. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 55 as though fully
16 set forth herein.

17 57. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
18 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
19 (commencing with section 17500) of Part 3 of Division 7 of the Business and Professions Code.
20 Business and Professions Code § 17200.

21 58. Plaintiffs are informed and believe and thereon allege that Defendants did not pay
22 Plaintiff and similarly situated employees all wages owed, including meal and rest period premiums,
23 minimum, overtime, and double time wages, reimbursement for expenses, PTO/vacation, and sick leave
24 pay in violation of California Labor Code sections 246, 226.7, 227.3, 510, 512 and 1194, 2802, and
25 Wage Order No. 16.

26 59. Plaintiffs are also informed and believe and thereon allege that such actions and/or
27 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
28

1 Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th
2 163 (2000).

3 60. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
4 UCL (including B&P Code § 17203), Plaintiffs and similarly situated employees are entitled to
5 restitution as a result of Defendants' unfair business practices, including, but not limited to, interest and
6 penalties pursuant to B&P §§ 17203, 17208, for the violations of Labor Code sections 246, 226.7, 227.3,
7 510, 512, 1194 and Wage Order No. 16.

8
9 **SEVENTH CAUSE OF ACTION**
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

10 61. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 60 as though fully
11 set forth herein.

12 62. Labor Code section 2802(a) states that "An employer shall indemnify his or her
13 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
15 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

16 63. Plaintiff and similarly situated employees used their personal cell phones for work
17 purposes but did not receive all reimbursement due for such use.

18 64. Defendants' conduct described herein violated California Labor Code section 2802. As a
19 proximate result of Defendants' conduct, Plaintiff have been damaged as stated in the section below
20 titled "DAMAGES."

21 **EIGHTH CAUSE OF ACTION**
22 **FAILURE TO PAY MINIMUM WAGES**
23 **(As to all Defendants)**

24 65. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 64 as though fully
25 set forth herein.

26 66. For the three (3) years preceding the filing of this Complaint, Defendants were required
27 to compensate Plaintiffs and similarly situated employees with at least the State's minimum wage at the
28 time of \$10.00 per hour for all time worked from January 1, 2016 to December 31, 2016, \$10.50 per

1 hour from January 1, 2017 to December 31, 2017, \$11.00 per hour from January 1, 2018 to December
2 31, 2018, \$12.00 per hour from January 1, 2019 to December 31, 2019, and \$13.00 per hour from
3 January 1, 2020 to the present. *See, e.g.,* MW Order -2014; MW Order-2017; MW Order-2019; Labor
4 Code § 1194.

5 67. Defendants failed to pay Plaintiffs and similarly situated employees for all hours worked
6 due to their unlawful rounding policy and practice.

7 68. Plaintiffs and similarly situated employees were not exempt to the State's Minimum
8 Wage Orders. Defendants were aware of their obligation to pay Plaintiffs and similarly situated
9 employees minimum wages but failed to do so.

10 69. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees
11 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
12 the extent pertinent as if set forth here in full.

13 **NINTH CAUSE OF ACTION**
14 **PRIVATE ATTORNEYS GENERAL ACT**
(As to all Defendants)

15 70. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 69 as though fully
16 set forth herein.

17 71. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the
18 following provisions of the Labor Code in their dealings with him and other similarly situated current
19 and former employees:

- 20 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay
21 Overtime Wages)
- 22 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 23 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
24 Statements)
- 25 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 26 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
27 Work in Any Industrial Welfare Commission Order)
- 28

- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 10(A) and 10(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 1174(d); IWC Order 16, § 6(A)(1) (Failure to Maintain Accurate Records of Meal Periods)
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 11(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 246 *et seq.* (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code § 1174 (Failure to Keep Accurate Time Records)
- Violation of Labor Code § 227.3 (Failure to Pay Vacation Wages)

72. Plaintiffs seek civil penalties against Defendant as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

73. Plaintiffs seek these civil penalties from Defendant pursuant to Labor Code sections 2699(a) and 2699.3.

TENTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES
(As to all Defendants)

74. Plaintiffs incorporate by reference and re-alleges paragraphs 1 through 72 as though fully set forth herein.

75. “[W]henver a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.” Cal. Labor Code § 227.3.

76. Defendants utilized a PTO policy that incorporated a forfeiture provision for employees working six (6) months or less. Thus, employees who worked for Defendants six (6) months or less were not paid all accrued but unused vacation wages owing to them at the time of their terminations. As

1 a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been
2 damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent
3 pertinent as if set forth here in full.

4 **DAMAGES**

5 WHEREFORE, Plaintiffs request relief as follows:

- 6 1. A Jury trial;
- 7 2. As to the First Cause of Action:
 - 8 a. Wages in an amount proven at trial;
 - 9 b. Interest for the wages due pursuant to Labor Code section 1194;
 - 10 c. For reasonable attorney's fees and costs incurred pursuant to Labor Code
11 section 1194;
- 12 3. As to the Second and Third Causes of Action:
 - 13 a. For wages in an amount proven at trial;
 - 14 b. For attorney's fees and costs and interest pursuant to Labor Code sections
15 218.5 and 218.6, and California Code of Civil Procedure section 1021.5;
- 16 4. As to the Fourth Cause of Action:
 - 17 a. Penalties as provided for in Labor Code section 226, including the greater
18 of all actual damages or fifty dollars (\$50) for the initial pay period in
19 which the violation occurred and one hundred dollars (\$100) per employee
20 for each violation in the subsequent pay periods, but not to exceed four
21 thousand dollars (\$4,000);
 - 22 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code
23 section 226(e);
- 24 5. As to the Seventh Cause of Action:
 - 25 a. \$250,000;
 - 26 b. For attorney's fees, interest, and costs pursuant to Labor Code section
27 2802(c);
- 28 6. As to the Eighth Cause of Action:

- a. Wages in an amount proven at trial;
- b. Interest for the wages due pursuant to Labor Code section 1194;
- c. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 1194;

7. As to the Ninth Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

8. As to the Tenth Cause of Action:

- a. For \$250,000;
- b. For all unpaid vacation wages due and owing;
- c. For reasonable attorney's fees, costs, and interest incurred pursuant to Labor Code sections 218.5 and 218.6;

9. As to All Causes of Action:

- a. For other such relief as this Court may deem just and proper;
- b. Attorney's fees as provided by law; and
- c. Interest as provided by law.

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1 Dated: April 23, 2021

Shimoda Law Corp.

2
3
4 By: 

Galen Shimoda

Justin Rodriguez

Brittany V. Berzin

Attorneys for Plaintiffs Phil Washington and
Jonathan Sanchez

5
6
7
8 Dated: April 23, 2021

Rastegar Law Group, APC

9
10 By: 

Farzad Rastegar

Douglas W. Perlman

Attorneys for Plaintiff Carlos Sandoval

1 *Washington, et al. v. Katerra, Inc., et al.*
2 Sacramento Superior Court, Case No. 34-2020-00278086

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On May 10, 2021, I served the following documents on the party below:

- 9 • Plaintiff's Second Amended Complaint for Damages

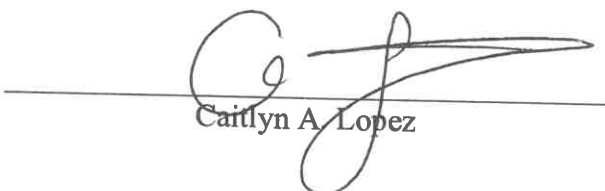
10 Laura E. Hayward (SBN: 204014) 11 Michael J. Hui (SBN: 273212) 12 Littler Mendelson, P.C. 13 333 Bush Street, 34 th Floor 14 San Francisco, CA 94104 15 Phone: (415) 433-1940 Fax: (415) 399-8490 Email: lhayward@littler.com mhui@littler.com	
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16 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
17 processing of correspondence for mailing with the United States Postal Service
18 and that each day's mail is deposited with the United States Postal Service that
19 same day in the ordinary course of business. On the date set forth above, I served
20 the aforementioned document(s) on the parties in said action by placing a true
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
collection and mailing on this date, following ordinary business practices, at Elk
Grove, California, addressed as set forth above.

21 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

22 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
23 personally delivered via the following overnight courier service: UPS.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct, and that this declaration was executed on May 10, 2021, at Elk Grove, California.

26
27 
28 Caitlyn A. Lopez