

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 David Keledjian (SBN 309135)
david@setarehlaw.com
3 SETAREH LAW GROUP
9665 Wilshire Blvd., Suite 430
4 Beverly Hills, California 90212
Telephone (310) 888-7771
5 Facsimile (310) 888-0109

6 Attorneys for Plaintiff RENE BECKOM

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO
10 UNLIMITED JURISDICTION

11 RENE BECKOM, on behalf of himself and all
12 others similarly situated,

13 *Plaintiff,*

14 vs.

15 STRAUCH & COMPANY, a California
corporation; CAMERON PARK
16 PETROLEUM, INC., a California corporation;
STRAUCH BROTHER INCORPORATION,
17 a California corporation; STRAUCH
MANAGEMENT, LLC, a California
18 corporation; MARK B. STRAUCH, an
individual; MATTHEW C. STRAUCH, an
19 individual; and DOES 1 through 50, inclusive,

20 *Defendants.*
21
22
23
24
25
26
27
28

FILED/ENDORSED

MAR 22 2021

By: R. San Miguel
Deputy Clerk

Case No. 34-2020-00289457

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
7. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff RENE BECKOM (“Plaintiff”), on behalf of himself, the state of California, all others
2 similarly situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants STRAUCH &
5 COMPANY, a California corporation; CAMERON PARK PETROLEUM, INC., a California
6 corporation; STRAUCH BROTHER INCORPORATION, a California corporation; STRAUCH
7 MANAGEMENT, LLC, a California corporation; MARK B. STRAUCH, an individual; MATTHEW
8 C. STRAUCH, an individual; and DOES 1 through 50, inclusive, (collectively referred to as
9 “Defendants”) for alleged violations of the California Labor Code and California Business and
10 Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 11 (1) failed to pay them overtime wages at the correct rate;
- 12 (2) failed to pay them double time wages at the correct rate;
- 13 (3) failed to pay them overtime and/or double time wages by failing to include all
14 applicable remuneration in calculating the regular rate of pay;
- 15 (4) failed to provide them with meal periods;
- 16 (5) failed to provide them with rest periods;
- 17 (6) failed to pay them premium wages for missed meal and rest periods;
- 18 (7) failed to provide them with accurate written wage statements; and
- 19 (8) failed to pay them all of their final wages following separation of employment.

20 Based on these alleged Labor Code violations, Plaintiff now brings this class and
21 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
22 restitution and related relief on behalf of himself, the state of California, all others similarly situated,
23 and the general public.

24 **2. JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction to hear this case because the monetary
26 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
27 of the Superior Court of the State of California.

28 4. Venue is proper in the County of Sacramento pursuant to Code of Civil Procedure

sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

5. Venue is proper in Sacramento County because Defendants' have at all times alleged herein, conducted business in Sacramento County, and throughout California. As such, venue is proper in any county in California.

6. Plaintiff is informed and believes, and thereupon alleges that the individual claims of the classes defined below are under the \$75,000 threshold for federal diversity jurisdiction and the aggregate claim is under the \$5,000,000 threshold for federal jurisdiction under the Class Action Fairness Act of 2005.

PARTIES

7. Plaintiff RENE BECKOM is, and at all relevant times mentioned herein, an individual residing in the State of California.

8. Plaintiff is informed and believes, and thereupon alleges that STRAUCH & COMPANY, is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

9. Plaintiff is informed and believes, and thereupon alleges that CAMERON PARK PETROLEUM, INC., is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

10. Plaintiff is informed and believes, and thereupon alleges that Defendant STRAUCH BROTHER INCORPORATION, is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

11. Plaintiff is informed and believes, and thereupon alleges that Defendant STRAUCH MANAGEMENT, LLC, is, and at all relevant times mentioned herein, a California corporation doing business in the State of California.

12. Plaintiff is informed and believes, and thereupon alleges that Defendant MARK B. STRAUCH, is, and at all relevant times mentioned herein, an individual over the age of eighteen and a resident of Sacramento county, in the State of California.

1 13. Plaintiff is informed and believes, and thereupon alleges that Defendant MATTHEW
2 C. STRAUCH, is, and at all relevant times mentioned herein, an individual over the age of eighteen
3 and a resident of Sacramento county, in the State of California.

4 14. Defendants STRAUCH & COMPANY, CAMERON PARK PETROLEUM, INC.,
5 STRAUCH BROTHER INCORPORATION, and STRAUCH MANAGEMENT, LLC, shall
6 collectively be referred to as the “Company.”

7 15. Plaintiff is informed and believes and thereon alleges that Defendants MARK B.
8 STRAUCH and MATTHEW C. STRAUCH (collectively the “Strauch Brothers”), at all times
9 relevant to this Complaint, were the alter egos of the Company. Plaintiff alleges, upon information
10 and belief, that the Strauch Brothers, either individually or with members of their family, owned,
11 controlled, and dominated the Company; that they commingled the funds of the Company with their
12 personal assets, as well as the assets of other entities owned in whole or in part by them; that they
13 failed to segregate the funds of these separate entities; that they wrongly diverted corporate funds or
14 assets to non-corporate uses; that they treated the assets of the Company as their own; that they held
15 themselves out as being personally liable for the debts of the Company; that they failed to maintain
16 minutes or adequate corporate records and confused the records of various entities; that they used the
17 same office or business location and employed the same employees and attorneys for all entities; that
18 they failed to adequately capitalize the Company; that they used the Company as a mere shell,
19 instrumentality, or conduit for the business of an individual or individuals, namely, themselves and
20 their families; that they disregarded legal formalities and failed to maintain arm’s-length relationships
21 among related entities; that they used the corporate entity to procure labor, services, and merchandise
22 for themselves or other entities; that they diverted assets from the Company to the detriment of
23 creditors, or manipulated assets and liabilities between entities so as to concentrate the assets in one
24 and the liabilities in another; that they used the Company as subterfuges of illegal transactions; and
25 that they formed and used the Company to transfer to it their existing liabilities. Plaintiff further avers
26 that recognizing the acts and conduct described in this Complaint as those only of the Company would
27 promote an inequitable and unjust result, namely, the deprivation of Plaintiff’s fundamental rights
28 under the Labor Code, as described herein.

1 16. Plaintiff is informed and believes that both MARK B. STRAUCH and MATTHEW
2 C. STRAUCH are natural persons who are the owners, directors, officers, or managing agents of the
3 Company, who violated, or caused to be violated, the Labor Code Sections alleged herein, and are
4 liable under Labor Code § 558.1.

5 17. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
6 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
7 will amend this Complaint to allege the true names and capacities of the DOE defendants when
8 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
9 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
10 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
11 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
12 defendants when ascertained.

13 18. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
14 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
15 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
16 or all of the other defendants, and in doing the things alleged herein, were acting within the course
17 and scope of such relationship and with the full knowledge, consent and ratification by such other
18 defendants.

19 19. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
20 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
21 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
22 and omissions alleged herein.

23 20. This action has been brought and may be maintained as a class action pursuant to Code
24 of Civil Procedure section 382 because there is a well-defined community of interest among the
25 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
26 unaware of any difficulties likely to be encountered in managing this case as a class action.

27 21. **Relevant Time Period:** The relevant time period is defined as the time period
28 beginning four years prior to the filing of this action until judgment is entered.

1 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
2 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
3 in California four years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action (“Hourly Employee Class”).

5 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
6 shift in excess of five hours during the four years prior to the filing of this action and
7 ending on the date that final judgment is entered in this action

8 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
9 of at least three and one-half (3.5) hours the four years prior to the filing of this action
10 and ending on the date that final judgment is entered in this action.

11 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
12 separated from their employment with Defendants during the period beginning three
13 years before the filing of this action and ending when final judgment is entered.

14 **Wage Statement Class:** All persons employed by Defendants in California during the period
15 beginning one year before the filing of this action and ending when final judgment is entered.

16 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
17 during the four years prior to the filing of this action and ending on the date that final judgment
18 is entered in this action.

19 22. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
20 to amend or modify the class definitions with greater specificity, by further division into sub-classes
21 and/or by limitation to particular issues.

22 23. **Numerosity:** The class members are so numerous that the individual joinder of each
23 individual class member is impractical. While Plaintiff does not currently know the exact number of
24 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
25 exceeds the minimum required for numerosity under California law.

26 24. **Commonality and Predominance:** Common questions of law and fact exist as to all
27 class members and predominate over any questions which affect only individual class members.
28 These common questions include, but are not limited to:

- 29 A. Whether Defendants maintained a policy or practice of failing to provide
- 30 employees with their rest periods;
- 31 B. Whether Defendants maintained a policy or practice of failing to provide
- 32 employees with their meal periods;
- 33 C. Whether Defendants failed to pay premium wages to class members when they

1 have not been provided with meal and rest periods at the appropriate rates of
2 pay;

3 D. Whether Defendants failed to pay minimum and/or overtime wages to class
4 members for all time worked;

5 E. Whether Defendants failed to provide class members with accurate written
6 wage statements as a result of providing them with written wage statements
7 with inaccurate entries for, among other things, amounts of gross and net
8 wages, and total hours worked;

9 F. Whether Defendants applied policies or practices that result in late and/or
10 incomplete final wage payments;

11 G. Whether Defendants are liable to class members for waiting time penalties
12 under Labor Code section 203; and

13 H. Whether class members are entitled to restitution of money or property that
14 Defendants may have acquired from them through unfair competition;

15 25. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
16 is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to
17 comply with the California Labor Code and Business and Professions Code as alleged in this
18 Complaint.

19 26. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
20 that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class
21 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
22 and adequately represent and protect the interests of the other class members.

23 27. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
24 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
25 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
26 of Plaintiff and absent class members.

27 28. **Superiority:** A class action is vastly superior to other available means for fair and
28 efficient adjudication of the class members' claims and would be beneficial to the parties and the

1 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
2 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
3 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
4 due to many individual class members are likely to be relatively small and would thus make it difficult,
5 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class
6 action will serve an important public interest by permitting class members to effectively pursue the
7 recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent
8 or contradictory judgments inherent in individual litigation.

9 **GENERAL ALLEGATIONS**

10 29. Plaintiff worked for Defendants from November 4, 2019 through February 25, 2020
11 as a non-exempt hourly employee.

12 30. Plaintiff and Class members were not paid proper wages and overtime for all hours
13 worked, at the proper rates of pay. Plaintiff and class members were consistently required to work in
14 excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members
15 to overtime wages. Plaintiff and class members earned commission earnings and non-discretionary
16 and performance-based bonuses in addition to their hourly rates of pay. However, these additional
17 earnings were not factored or considered when determining Plaintiff and class members' regular rates
18 of pay, and respective overtime rates of pay.

19 31. Putative class members were not provided with meal periods of at least thirty (30)
20 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
21 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
22 take their meal periods, or that advised putative class members of their meal and rest period rights;
23 and (3) Defendants' practice of requiring putative class members to continue working through their
24 meal and rest periods due to the excessive workload.

25 32. Putative class members were not provided with rest periods of at least ten (10) minutes
26 for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not
27 scheduling each rest period as part of each work shift, including second rest breaks for shifts of six
28 (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to

1 take their rest periods, or that properly advised putative class members of their rest period rights; (3)
2 Defendants' policy and practice of requiring putative class members to remain on the premises during
3 their rest breaks; (4) Defendants' policy and practice of requiring putative class members to continue
4 working through their rest breaks due to the excessive workload.

5 33. Additionally, and as discussed above, Defendants failed to pay Plaintiff and class
6 members premium pay wages at their appropriate regular rates of pay for each meal and rest period
7 denied.

8 34. Plaintiff and the putative class were not provided with accurate wage statements as
9 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
10 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
11 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
12 Additionally, the wage statements issued to Plaintiff and class members were not recorded in "ink or
13 other indelible form."

14 35. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
15 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

16 36. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
17 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
18 not included.

19 37. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
20 were not accurately reflected in that: all hours worked, including overtime, were not included.

21 38. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable
22 hourly rates in effect during the pay period and the corresponding number of hours worked at each
23 hourly rate by the employee" were not accurately reflected in that: all hours worked, including
24 overtime, were not included.

25 39. Additionally, Plaintiff and class members were required to purchase no-slip shoes and
26 black slacks in order to execute his duties under Defendants' employ, and for which hey were never
27 reimbursed.

28 ///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

4 **(Plaintiff and Meal Period Sub-Class)**

5 40. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
6 fully alleged herein.

7 41. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
8 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
9 Code and the applicable Industrial Welfare Commission Wage Order.

10 42. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
11 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
12 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
13 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
14 minutes for each work period of ten hours.

15 43. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
16 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
17 during required meal periods and require employers to pay non-exempt employees an hour of
18 premium wages on each workday that the employee is not provided with the required meal period.

19 44. Compensation for missed meal periods constitutes wages within the meaning of Labor
20 Code section 200.

21 45. Labor Code section 1198 makes it unlawful to employ a person under conditions that
22 violate the applicable Wage Order.

23 46. Section 11 of the applicable Wage Order states:

24 “No employer shall employ any person for a work period of more than five (5) hours
25 without a meal period of not less than 30 minutes, except that when a work period of
26 not more than six (6) hours will complete the day’s work the meal period may be
27 waived by mutual consent of the employer and employee. Unless the employee is
28 relieved of all duty during a 30 minute meal period, the meal period shall be considered
an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall
be permitted only when the nature of the work prevents an employee from being
relieved of all duty and when by written agreement between the parties an on-the-job
paid meal period is agreed to. The written agreement shall state that the employee

1 may, in writing, revoke the agreement at any time.”

2 47. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
3 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
4 members were not subject to valid on-duty meal period agreements with Defendants.

5 48. Plaintiff alleges that, at all relevant times during the applicable limitations period,
6 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
7 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
8 hour work period, as required by Labor Code section 512 ad the applicable Wage Order.

9 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
11 **Class** members when they worked five (5) hours without clocking out for any meal period.

12 50. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
14 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
15 them premium wages as required by Labor Code 512 and the applicable Wage Order.

16 51. Moreover, Defendants written policies fail to inform Meal period Class Members of
17 their meal period rights under the Labor Code and applicable Wage Orders.

18 52. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
19 **Class** members additional premium wages, and/or were not paid premium wages at the employees’
20 regular rates of pay when required meal periods were not provided.

21 53. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
22 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
23 thereon, and costs of suit.

24 54. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
25 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and the
26 **Meal Period Sub-Class** members, seek to recover reasonable attorneys’ fees.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18
19
20
21
22
23
24
25
26
27
28

20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

26
27
28

1 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
2 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**
3 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**
4 **Sub-Class** members to remain on the premises during their rest breaks; (4) Defendants' policy and
5 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks
6 due to the excessive workload

7 63. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
8 members additional premium wages when required rest periods were not provided.

9 64. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
10 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
11 costs of suit.

12 65. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
13 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Rest**
14 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

17 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

18 **(Plaintiff and Hourly Employee Class)**

19 66. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

21 67. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
22 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
23 applicable Wage Order.

24 68. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
25 which an employee is subject to the control of the employer, and includes all the time the employee
26 is suffered or permitted to work, whether or not required to do so."

27 69. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
28 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours

1 that an employer has actual or constructive knowledge that employees are working.

2 70. Labor Code section 1194 invalidates any agreement between an employer and an
3 employee to work for less than the minimum or overtime wage required under the applicable Wage
4 Order.

5 71. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
6 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
7 to the underlying unpaid minimum wages and interest thereon.

8 72. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
9 than the minimum wage required under the applicable Wage Order for all hours worked during a
10 payroll period.

11 73. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
12 person acting either individually or as an officer, agent or employee of another person, to pay an
13 employee, or cause an employee to be paid, less than the applicable minimum wage.

14 74. Labor Code section 1198 makes it unlawful for employers to employ employees under
15 conditions that violate the applicable Wage Order.

16 75. Labor Code section 204 requires employers to pay non-exempt employees their earned
17 wages for the normal work period at least twice during each calendar month on days the employer
18 designates in advance and to pay non-exempt employees their earned wages for labor performed in
19 excess of the normal work period by no later than the next regular payday.

20 76. Labor Code section 223 makes it unlawful for employers to pay their employees lower
21 wages than required by contract or statute while purporting to pay them legal wages.

22 77. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
23 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
24 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
25 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
26 consecutive day of one workweek.

27 78. Labor Code section 510 and Section 3 of the applicable Wage Order also require
28 employers to pay non-exempt employees overtime wages of no less than two times their respective

1 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
2 worked in excess of eight hours on a seventh consecutive workday during the workweek.

3 79. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
4 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
5 working conditions and compensation arrangements.

6 80. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
7 **Employee Class** members for all time worked, including but not limited to, overtime hours at
8 statutory and/or agreed rates. Plaintiff and **Hourly Employee Class** members were not paid proper
9 wages and overtime for all hours worked, at the proper rates of pay. Plaintiff and **Hourly Employee**
10 **Class** members were consistently required to work in excess of eight (8) hours a day and/or forty (40)
11 hours a week, entitling Plaintiff and **Hourly Employee Class** members to overtime wages. Plaintiff
12 and **Hourly Employee Class** members earned commission earnings and non-discretionary and
13 performance-based bonuses in addition to their hourly rates of pay. However, these additional
14 earnings were not factored or considered when determining Plaintiff and **Hourly Employee Class**
15 members' regular rates of pay, and respective overtime rates of pay.

16 81. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
17 members have suffered damages in an amount, subject to proof, to the extent they were not paid the
18 full amount of wages earned during each pay period during the applicable limitations period,
19 including overtime wages.

20 82. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
21 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and
22 overtime wages, interest thereon and costs of suit.

23 83. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
24 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
25 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

3 **(Lab. Code § 226)**

4 **(Plaintiff and Wage Statement Penalties Sub-Class)**

5 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 85. Labor Code section 226(a) states:

8 “An employer, semimonthly or at the time of each payment of wages, shall furnish to
9 his or her employee, either as a detachable part of the check, draft, or voucher paying
10 the employee’s wages, or separately if wages are paid by personal check or cash, an
11 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
12 worked by the employee, except as provided in subdivision (j), (3) the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
14 rate basis, (4) all deductions, provided that all deductions made on written orders of
15 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
16 inclusive dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number or an
18 employee identification number other than a social security number, (8) the name and
19 address of the legal entity that is the employer and, if the employer is a farm labor
20 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
21 legal entity that secured the services of the employer, and (9) all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
24 temporary services employer as defined in Section 201.3, the rate of pay and the total
25 hours worked for each temporary services assignment. The deductions made from
26 payment of wages shall be recorded in ink or other indelible form, properly dated,
27 showing the month, day, and year, and a copy of the statement and the record of the
28 deductions shall be kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. For purposes of
this subdivision, ‘copy’ includes a duplicate of the itemized statement provided to an
employee or a computer-generated record that accurately shows all of the information
required by this subdivision.”

86. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
“detachable part of the check” provision and the “accurate itemized statement in writing” provision
of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
retains the right to elect to receive a written paper stub or record and that those who are provided with
electronic wage statements retain the ability to easily access the information and convert the electronic
statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

87. Plaintiff is informed and believes that, at all relevant times during the applicable
limitations period, Defendants have failed to provide **Wage Statement Class** members with written

1 wage statements as described above. Additionally, the wage statements issued to class members
2 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
3 above.

4 88. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
5 **Statement Class** members with accurate written wage statements were intentional in that Defendants
6 have the ability to provide them with accurate wage statements but have intentionally provided them
7 with written wage statements that Defendants have known do not comply with Labor Code section
8 226(a).

9 89. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
10 Defendants have violated their legal rights to receive accurate wage statements and have misled them
11 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
12 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
13 discovery and mathematical computations to determine the amount of wages owed, has caused
14 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
15 submission of inaccurate information about wages and deductions to federal and state government
16 agencies.

17 90. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
18 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
19 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
20 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
21 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

24 **(Lab. Code §§ 201-203)**

25 **(Plaintiff and Waiting Time Penalties Sub-Class)**

26 91. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
27 herein.

28 92. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have

1 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
2 earned and unpaid before termination or resignation.

3 93. At all relevant times, pursuant to Labor Code section 201, employees who have been
4 discharged have been entitled to payment of all final wages immediately upon termination.

5 94. At all relevant times, pursuant to Labor Code section 202, employees who have
6 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
7 payment of all final wages at the time of resignation.

8 95. Plaintiff is informed and believes that, at all relevant time during the applicable
9 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
10 members all of their final wages in accordance with the Labor Code.

11 96. Plaintiff is informed and believes that, at all relevant times during the applicable
12 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
13 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
14 sections 201 or 202 by failing to timely pay them all final wages.

15 97. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
16 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful
17 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
18 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
19 requirements.

20 98. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
21 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
22 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

23 99. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
24 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
25 **Class** members, seek awards of reasonable attorneys' fees and costs.

26 ///

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

4 **(Plaintiff and UCL Class)**

5 100. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
6 herein.

7 101. Business and Professions Code section 17200 defines “unfair competition” to include
8 any unlawful business practice.

9 102. Business and Professions Code section 17203-17204 allow a person who has lost
10 money or property as a result of unfair competition to bring a class action in accordance with Code
11 of Civil Procedure section 382 to recover money or property that may have been acquired from
12 similarly situated persons by means of unfair competition.

13 103. California law requires employers to pay hourly, non-exempt employees for all hours
14 they are permitted or suffered to work, including hours that the employer knows or reasonable should
15 know that employees have worked.

16 104. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,
17 SECOND, and THIRD causes of action herein.

18 105. Plaintiff lost money or property as a result of the aforementioned unfair competition.

19 106. Defendants have or may have acquired money by means of unfair competition.

20 107. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
21 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
22 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199
23 which make it a misdemeanor to commit the Labor Code violations alleged herein.

24 108. Defendants have committed criminal conduct through their policies and practices of,
25 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
26 employees with compliant meal and rest periods and pay non-exempt employees for all hours worked
27 at the proper rates of pay.

28 109. Defendants’ unlawful conduct as alleged in this Complaint amounts to and constitutes

1 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
2 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
3 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
4 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
5 similarly situated persons in a class action proceeding.

6 110. As a result of Defendants' violations of the Labor Code during the applicable
7 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
8 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

9 111. Plaintiff is informed and believes that other similarly situated persons have been
10 subject to the same unlawful policies or practices of Defendants.

11 112. Due to the unfair and unlawful business practices in violation of the Labor Code,
12 Defendants have gained a competitive advantage over other comparable companies doing business in
13 the State of California that comply with their legal obligations.

14 113. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
15 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates
16 or is considered unlawful under any other state or federal law.

17 114. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
18 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
19 Defendants, and each of them, and their agents and employees, from further violations of the Labor
20 Code and applicable Wage Orders.

21 115. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
22 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
23 Defendants, and each of them, and their agents and employees, from further violations of the Labor
24 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
25 order permanently enjoining Defendants, and each of them, and their respective agents and
26 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
27 Wage Orders.

28 116. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

4 117. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
5 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
6 reasonable attorneys' fees in connection with their unfair competition claims.

7 118. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
8 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
9 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
10 and unfair business practices.

11 119. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
12 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
13 reasonable attorneys' fees in connection with their unfair competition claims.

14 **SEVENTH CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698 *et seq.*)**

17 120. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 121. During the applicable limitations period, Defendants have violated Labor Code
20 sections 201, 202, 203, 204, 210, 223, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, and 1198.

21 122. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
22 herself and other current and former employees, to bring a representative civil action to recover
23 civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need
24 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

25 123. Plaintiff, a former employee against who Defendants committed one or more of the
26 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
27 within the meaning of Labor Code section 2699(c).

28 124. Plaintiff has complied with the procedures for bringing suit specified in Labor Code

1 section 2699.3.

2 125. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
3 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 223, 226(a),
4 226.7, 227.3, 510, 512, 558, 1194, 1197, and 1198:

- 5 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1174, 1194,
6 1198 and 2802, \$100 for each employee per pay period for each initial
7 violation and \$200 for each employee per pay period for each subsequent
8 violation (penalties set by Labor Code section 2699(f)(2));
- 9 B. For violations of Labor Code section 203, a penalty in an amount not
10 exceeding thirty days pay as waiting time (penalties set by Labor Code
11 section 256);
- 12 C. For violations of Labor Code section 204, \$100 for each employee for each
13 initial violation that was neither willful nor intentional, \$200 for each
14 employee, plus 25% of the amount unlawfully withheld from each employee,
15 for each initial violation that was either willful or intentional, and \$200 for
16 each employee, plus 25% of the amount unlawfully withheld from each
17 employee, for each subsequent violation, regardless of whether the
18 subsequent violation was either willful or intentional (penalties set by Labor
19 Code section 210);
- 20 D. For violations of Labor Code section 223, \$100 for each employee for each
21 initial violation that was neither willful nor intentional, \$200 for each
22 employee, plus 25% of the amount unlawfully withheld from each employee,
23 for each initial violation that was either willful or intentional, and \$200 for
24 each employee, plus 25% of the amount unlawfully withheld from each
25 employee, for each subsequent violation, regardless of whether the
26 subsequent violation was either willful or intentional (penalties set by Labor
27 Code section 225.5);
- 28 E. For violations of Labor Code section 226(a), if this action is deemed to be an

1 initial citation, \$250 for each employee for each violation. Alternatively, if
2 an initial citation or its equivalent occurred before the filing of this action,
3 \$1,000 for each employee for each violation (penalties set by Labor Code
4 section 226.3);

5 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
6 each initial pay period for which the employee was underpaid, and \$100 for
7 each employee for each subsequent pay period for which the employee was
8 underpaid (penalties set by Labor Code section 558);

9 G. For violations of Labor Code section 1197, \$100 for each aggrieved
10 employee for each initial violation of Labor Code section 1197 that was
11 intentional, and \$250 for each aggrieved employee per pay period for each
12 subsequent violation of Labor Code section 1197, regardless of whether the
13 initial violation was intentional (penalties set by Labor Code section 1197.1);

14 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
15 attorneys' fees and costs in connection with her claims for civil penalties.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
18 public, prays for relief and judgment against Defendants as follows:

- 19 (1) An order that the action be certified as a class action;
20 (2) An order that Plaintiff be appointed class representative;
21 (3) An order that counsel for Plaintiff be appointed class counsel;
22 (4) Unpaid wages;
23 (5) Actual damages;
24 (6) Liquidated damages;
25 (7) Restitution;
26 (8) Declaratory relief;
27 (9) Pre-judgment interest;
28 (10) Statutory penalties;

- 1 (11) Civil penalties;
2 (12) Costs of suit;
3 (13) Reasonable attorneys' fees; and
4 (14) Such other relief as the Court deems just and proper.

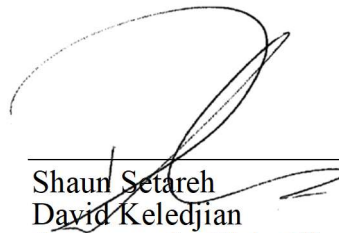
5 **DEMAND FOR JURY TRIAL**

6 Plaintiff, on behalf of himself, the state of California, all other similarly situated, and the
7 general public, hereby demands a jury trial on all issues so triable.

8
9 Dated: March 16, 2021

SETAREH LAW GROUP

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Shaun Setareh
David Keledjian
Attorneys for Plaintiff
RENE BECKOM

[illegible]

On March 22, 2021, I served the foregoing documents described as:

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

[X] ONLY BY ELECTRONIC TRANSMISSION

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


Lauren Farrington