

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Anthony Mohr

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 VICTOR DIAZ
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 UNLIMITED JURISDICTION

11 VICTOR DIAZ, on behalf of himself and all
12 others similarly situated,

13 *Plaintiff,*

14 vs.

15 UAW-LABOR EMPLOYMENT AND
16 TRAINING CORPORATION, a California
corporation; and DOES 1 through 50,
inclusive,

17 *Defendants.*
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Case No.

21STCV01847

COMPLAINT FOR:

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff VICTOR DIAZ ("Plaintiff"), on behalf of himself, all others similarly situated
2 aggrieved employees, the State of California, and the general public, complains and alleges as
3 follows:

4 INTRODUCTION

5 1. Plaintiff brings this representative action against Defendants UAW-LABOR
6 EMPLOYMENT AND TRAINING CORPORATION, a California corporation; and DOES 1
7 through 50, inclusive, (collectively referred to as "Defendants") for alleged violations of the Labor
8 Code. As set forth below, Plaintiff alleges that Defendants have:

9 (1) failed to provide him and all other aggrieved employees with meal periods;

10 (2) failed to provide them with rest periods;

11 (3) failed to pay them premium wages for missed meal and/or rest periods;

12 (4) failed to properly record their meal and rest breaks;

13 (5) failed to properly pay them on a semi-monthly basis;

14 (6) failed to provide them with accurate written wage statements; and

15 (7) failed to pay them all of their final wages following separation of employment.

16 2. Based on these alleged Labor Code violations, Plaintiff now brings this representative
17 action for civil penalties on behalf of himself, all others similarly situated aggrieved employees, the
18 state of California, and the general public.

19 JURISDICTION AND VENUE

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

23 4. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure
24 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
25 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
26 maintains offices, transacts business and/or has an agent therein.

27 5. Venue is proper in Los Angeles County because Defendants' have at all times alleged
28 herein, conducted business in Los Angeles County, and throughout California. As such, venue is

1 proper in any county in California.

2 **PARTIES**

3 6. Plaintiff was employed by Defendant in the State of California as an hourly, non-exempt
4 employee from approximately January 13, 2020 through March 5, 2020.

5 7. Defendant UAW-LABOR EMPLOYMENT AND TRAINING CORPORATION is a
6 California Corporation and does business in the State of California.

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

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

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

24 **GENERAL ALLEGATIONS**

25 11. Plaintiff worked for Defendants as a non-exempt, hourly employee from
26 approximately from January of 2020 through March of 2020.

27 12. Defendants failed to pay Plaintiff and aggrieved employees on a semi-monthly basis
28 in compliance with the Labor Code. Specifically, Plaintiff and aggrieved employees' pay periods

1 were from 24th of each month through the 8th of the following month, and again from the 9th of the
2 month through the 23rd of the month.

3 13. Aggrieved employees were not provided with meal periods of at least thirty (30)
4 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
5 period as part of each work shift and (2) no formal written meal and rest period policy that
6 encouraged employees to take their meal and rest periods or that advised Plaintiff and aggrieved
7 employees of the meal and rest period rights.

8 14. Plaintiff and the aggrieved employees were not provided with rest periods of at least
9 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
10 policy of not scheduling each rest period as part of each work shift and (2) no formal written meal
11 and rest period policy that encouraged employees to take their meal and rest periods; (3) Defendants'
12 practice of requiring aggrieved employees to continue working through meal and rest periods due to
13 the excessive workload; and (4) Defendants common policy and practice of failing to properly record
14 and track employees' meal periods.

15 15. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
16 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
17 (5) hours worked.

18 16. Plaintiff and the aggrieved employees were not provided with rest periods of at least
19 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
20 policy of not scheduling each rest period as part of each work shift and no formal written meal and
21 rest period policy that encouraged employees to take their meal and rest periods, or that advised
22 Plaintiff and aggrieved employees of the meal and rest period rights. Additionally, Defendants
23 implemented a common policy and practice of failing to properly record and track employees' the
24 rest periods owed to aggrieved employees.

25 17. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
26 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
27 hours worked due to complying with Defendants' requirements that required Plaintiff and the
28 aggrieved employees to remain at their security posts through their rest periods.

1 18. Plaintiff and the aggrieved employees were not provided with accurate wage
2 statements as mandated by law pursuant to Labor Code section 226.

3 19. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
4 earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

5 20. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
6 by the employee” were not accurately reflected in that: all hours worked, including overtime, were
7 not included.

8 21. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned”
9 were not accurately reflected in that: all hours worked, including overtime, were not included.

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

14 **FIRST CAUSE OF ACTION**

15 **CIVIL PENALTIES**

16 **(Lab. Code §§ 2698 *et seq.*)**

17 **(Plaintiff Against All Defendants)**

18 23. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
19 herein.

20 24. Labor Code § 204 requires:

21 all wages earned by any person in any employment are due and payable twice during
22 each calendar month, on days designated in advance by the employer as the regular
23 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
24 month shall be paid for between the 16th and the 26th day of the month during which
25 the labor was performed, and labor performed between the 16th and the last day,
26 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the
27 following month.

28 25. Here, Defendants had a common policy and practice of failing to pay Plaintiff and
aggrieved employees on a semi-monthly basis in compliance with the Labor Code § 204. Specifically,
Plaintiff and aggrieved employees’ pay periods were from 24th of each month through the 8th of the

1 following month, and again from the 9th of the month through the 23rd of the month.

2 26. At all relevant times, Plaintiff and the aggrieved employees have been non-exempt
3 employees of Defendants entitled to the full meal period protections of both the Labor Code and the
4 applicable Industrial Welfare Commission Wage Order.

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

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

14 29. Compensation for missed meal periods constitutes wages within the meaning of Labor
15 Code section 200.

16 30. Labor Code section 1198 makes it unlawful to employ a person under conditions that
17 violate the applicable Wage Order.

18 31. Section 11 of the applicable Wage Order states:

19 "No employer shall employ any person for a work period of more than five (5)
20 hours without a meal period of not less than 30 minutes, except that when a
21 work period of not more than six (6) hours will complete the day's work the
22 meal period may be waived by mutual consent of the employer and employee.
23 Unless the employee is relieved of all duty during a 30 minute meal period, the
24 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 may, in writing, revoke
the agreement at any time."

25 32. Furthermore, California Code of Regulations, Title 8, § 11040(7)(A)(3)
26 provides:

27
28 (A) Every employer shall keep accurate information with respect to each
employee including the following: . . . (3) Time records showing when the

1 employee begins and ends each work period. Meal periods, split shift intervals
2 and total daily hours worked shall also be recorded. Meal periods during which
3 operations cease and authorized rest periods need not be recorded.

4 33. Labor Code section 1198 makes it unlawful for employers to employ employees under
5 conditions that violate the applicable Wage Order.

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

10 35. Plaintiff alleges that, at all relevant times during the applicable limitations period,
11 aggrieved employees were routinely denied uninterrupted, duty-free meal periods of at least 30
12 minutes while employed by Defendant due to (1) Defendants' policy of not scheduling each meal
13 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
14 take their meal periods, or that advised aggrieved employees of their meal and rest period rights; and
15 (3) Defendants' practice of requiring aggrieved employees to continue working due to the excessive
16 workload. Defendants also failed to properly record and track the meal periods owed to Plaintiff and
17 aggrieved employees as required by Labor Code § 1174, California Code of Regulations, Title 8,
18 §11040(7)(A)(3), and applicable Wage Orders. Labor Code section 1198 makes it unlawful for
19 employers to employ employees under conditions that violate the applicable Wage Order.

20 36. Aggrieved employees were not subject to valid on-duty meal period agreements with
21 Defendant. California law requires that meal period waivers be documented in a written agreement
22 that is voluntarily signed by both the employee and employer. The written agreement must state that
23 the employee may, in writing, revoke the agreement at any time. 8 Cal. Code Regs. § 11040(11).
24 Plaintiff and the aggrieved employees did not execute lawful meal period waivers in accordance with
25 California law.

26 37. Section 12 of the applicable Wage Order imposes an affirmative obligation on
27 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
28 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the

1 middle of each work period insofar as practicable.

2 38. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
3 employers from requiring employees to work during required rest periods and require employers to
4 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each
5 workday that the employee is not provided with the required rest period(s).

6 39. Compensation for missed rest periods constitutes wages within the meaning of Labor
7 Code section 200.

8 40. Plaintiff alleges that, at all relevant times during the applicable limitations period,
9 Defendants maintained a policy or practice of not providing Plaintiff and aggrieved employees with
10 net rest periods of at least ten minutes for each four hour work period, or major fraction thereof, as
11 required by the applicable Wage Order.

12 41. At all relevant times, Defendants failed to pay Plaintiff and aggrieved employees
13 additional premium wages when required meal and rest periods were not provided.

14 42. Labor Code section 226(a) states:

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

43. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the

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

6 44. Plaintiff is informed and believes that, at all relevant times during the applicable
7 limitations period, Defendants have failed to provide aggrieved employees with written wage
8 statements as described above.

9 45. Plaintiff is informed and believes that Defendants’ failure to provide him and
10 aggrieved employees with accurate written wage statements were intentional in that Defendants have
11 the ability to provide them with accurate wage statements but have intentionally provided them with
12 written wage statements that Defendants have known do not comply with Labor Code section 226(a).

13 46. In addition, inaccurate information on their wage statements have prevented
14 immediate challenges to Defendants’ unlawful pay practices, has required discovery and
15 mathematical computations to determine the amount of wages owed, has caused difficulty and
16 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
17 inaccurate information about wages and deductions to federal and state government agencies.

18 47. At all relevant times, Plaintiff and aggrieved employees have been entitled, upon the
19 end of their employment with Defendants, to timely payment of all wages earned and unpaid before
20 termination or resignation.

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

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

26 50. At all relevant times, pursuant to Labor Code section 202, employees who have
27 resigned after giving less than seventy-two (72) hours notice of resignation have been entitled to
28 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

1 51. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
2 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

3 52. Plaintiff is informed and believes that, at all relevant time during the applicable
4 limitations period, Defendants have failed to timely pay aggrieved employees all of their final wages
5 in accordance with the Labor Code.

6 53. Plaintiff is informed and believes that, at all relevant times during the applicable
7 limitations period, Defendants have maintained a policy or practice of paying aggrieved employees
8 their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to
9 timely pay them all final wages.

10 54. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
11 timely pay all final wages to him and aggrieved employees have been willful in that Defendants have
12 the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have
13 intentionally adopted policies or practices that are incompatible with those requirements.

14 55. During the applicable limitations period, Defendants have violated Labor Code
15 sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, and 1198, Code of
16 Regulations, Title 8, 11040(7)(A)(3), and the applicable Wage Orders.

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

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

24 58. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
25 section 2699.3.

26 59. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
27 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 221, 223, 226(a),
28 226.7, 510, 512, 1174, 1194, 1197, and 1198, and Code of Regulations, Title 8, 11040(7)(A)(3), and

1 the applicable Wage Orders

- 2 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 512, 1174,
3 1194, and 1198, \$100 for each employee per pay period for each initial
4 violation and \$200 for each employee per pay period for each subsequent
5 violation (penalties set by Labor Code section 2699(f)(2));
- 6 B. For violations of Labor Code section 203, a penalty in an amount not exceeding
7 thirty days pay as waiting time (penalties set by Labor Code section 256);
- 8 C. For violations of Labor Code section 204, \$100 for each employee for each
9 initial violation that was neither willful nor intentional, \$200 for each
10 employee, plus 25% of the amount unlawfully withheld from each employee,
11 for each initial violation that was either willful or intentional, and \$200 for
12 each employee, plus 25% of the amount unlawfully withheld from each
13 employee, for each subsequent violation, regardless of whether the subsequent
14 violation was either willful or intentional (penalties set by Labor Code section
15 210);
- * 16 D. For violations of Labor Code section 223, \$100 for each employee for each
17 initial violation that was neither willful nor intentional, \$200 for each
18 employee, plus 25% of the amount unlawfully withheld from each employee,
19 for each initial violation that was either willful or intentional, and \$200 for
20 each employee, plus 25% of the amount unlawfully withheld from each
21 employee, for each subsequent violation, regardless of whether the subsequent
22 violation was either willful or intentional (penalties set by Labor Code section
23 225.5);
- 24 E. For violations of Labor Code section 226(a), if this action is deemed to be an
25 initial citation, \$250 for each employee for each violation. Alternatively, if an
26 initial citation or its equivalent occurred before the filing of this action, \$1,000
* 27 for each employee for each violation (penalties set by Labor Code section
28 226.3);

- 1 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
2 each initial pay period for which the employee was underpaid, and \$100 for
3 each employee for each subsequent pay period for which the employee was
4 underpaid (penalties set by Labor Code section 558);
- 5 G. For violations of Labor Code section 1197, \$100 for each aggrieved employee
6 for each initial violation of Labor Code section 1197 that was intentional, and
7 \$250 for each aggrieved employee per pay period for each subsequent violation
8 of Labor Code section 1197, regardless of whether the initial violation was
9 intentional (penalties set by Labor Code section 1197.1);
- 10 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
11 attorneys' fees and costs in connection with her claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself, the state of California, the general public, and
14 all other aggrieved employees, prays for relief and judgment against Defendants as follows:

- 15 (1) Pre-judgment interest;
16 (2) Civil penalties;

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- 1 (3) Costs of suit;
- 2 (4) Reasonable attorneys' fees; and
- 3 (5) Such other relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of himself, the State of California, the general public, all other aggrieved

6 employees, hereby demands a jury trial on all issues so triable.

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8 Dated: January 12, 2021

SETAREH LAW GROUP

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12 Shaun Setareh
13 David Keledjian
14 Attorneys for Plaintiff
15 PABLO COTZOMI

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