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11 DOUGLAS ESCALANTE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES

14 UNLIMITED JURISDICTION

15 DOUGLAS ESCALANTE, on behalf of
16 himself and all others similarly situated,

17 *Plaintiff,*

18 vs.

19 IMOBILE, LLC, a New York corporation;
20 IMOBILE EVOLUTION, LLC, a New York
21 corporation; IMOBILE OF CA, LLC, a
22 California corporation; IMOBILE OF
23 TARZANA, INC., a California corporation;
24 IMOBILE OF NORTHRIDGE MALL CA,
25 LLC, a California corporation; SARABJIT
26 LAMBA, an individual; and DOES 1 through
27 50, inclusive,

28 *Defendants.*

Case No. 21STCV19080

CLASS ACTION

FIRST AMENDED 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. Failure to Indemnify (Lab. Code § 2802); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff DOUGLAS ESCALANTE (“Plaintiff”), on behalf of himself, all others similarly
2 situated, all other aggrieved employees, the State of California, and the general public, complains and
3 alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this class and representative action against Defendants IMOBILE,
6 LLC, a New York corporation; IMOBILE EVOLUTION, LLC, a New York corporation; IMOBILE
7 OF CA, LLC, a California corporation; IMOBILE OF TARZANA, INC., a California corporation;
8 IMOBILE OF NORTHRIDGE MALL CA, LLC, a California corporation; SARABJIT LAMBA, an
9 individual; and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for alleged
10 violations of the California Labor Code and California Business and Professions Code. As set forth
11 below, Plaintiff alleges that Defendants have:

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

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

26 **JURISDICTION AND VENUE**

27 2. This Court has subject matter jurisdiction to hear this case because the monetary
28 damages, civil penalties, and restitution sought by Plaintiff from Defendants conduct exceeds the

1 minimal jurisdiction of the Superior Court of the State of California.

2 3. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure
3 sections 393, 395(a) and 395.5 in that liability arose this county because at least some of the
4 transactions that are the subject matter of this Complaint occurred therein and/or each defendant is
5 found, maintains offices, transacts business and/or has an agent therein.

6 4. Venue is proper in Los Angeles County because Defendants' have at all times alleged
7 herein, conducted business in Los Angeles County, and throughout California. As such, venue is
8 proper in any county in California.

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

13 **PARTIES**

14 6. Plaintiff DOUGLAS ESCALANTE is, and at all relevant times mentioned herein, an
15 individual residing in the State of California.

16 7. Plaintiff is informed and believes, and thereupon alleges that Defendant IMOBILE,
17 LLC, is, and at all relevant times mentioned herein, a New York corporation doing business in the
18 State of California.

19 8. Plaintiff is informed and believes, and thereupon alleges that Defendant IMOBILE
20 EVOLUTION, LLC, is, and at all relevant times mentioned herein, a New York corporation doing
21 business in the State of California.

22 9. Plaintiff is informed and believes, and thereupon alleges that Defendant IMOBILE,
23 OF CA, LLC, is, and at all relevant times mentioned herein, a California corporation doing business
24 in the State of California.

25 10. Plaintiff is informed and believes, and thereupon alleges that Defendant IMOBILE,
26 OF TARZANA, INC., is, and at all relevant times mentioned herein, a California corporation doing
27 business in the State of California.

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1 11. Plaintiff is informed and believes, and thereupon alleges that Defendant IMOBILE,
2 OF NORTHRIDGE MALL CA, LLC, is, and at all relevant times mentioned herein, a California
3 corporation doing business in the State of California.

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

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

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14. Plaintiff is informed and believes that Defendant SARABJIT LAMBA is a natural person who is the owner, director, officer, or managing agent of Defendants, who violated, or caused to be violated, the Labor Code Sections alleged herein, and is liable under Labor Code § 558.1.

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

Reimbursement Class: All persons employed by Defendants in California who incurred unreimbursed business expenditures for Defendants during the period beginning four years before the filing of this action and ending when final judgment is entered.

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

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

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

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

- A. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- B. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;

- 1 C. Whether Defendants failed to pay premium wages to class members when they
2 have not been provided with meal and rest periods at the appropriate rates of
3 pay;
- 4 D. Whether Defendants failed to pay minimum and/or overtime wages to class
5 members for all time worked;
- 6 E. Whether Defendants failed to provide class members with accurate written
7 wage statements as a result of providing them with written wage statements
8 with inaccurate entries for, among other things, amounts of gross and net
9 wages, and total hours worked;
- 10 F. Whether Defendants applied policies or practices that result in late and/or
11 incomplete final wage payments;
- 12 G. Whether Defendants are liable to class members for waiting time penalties
13 under Labor Code section 203;
- 14 H. Whether Defendants failed to reimburse class members for necessary business
15 expenditures incurred; and
- 16 I. Whether class members are entitled to restitution of money or property that
17 Defendants may have acquired from them through unfair competition;

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

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

26 25. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
27 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in

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1 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf
2 of Plaintiff and absent class members.

3 26. **Superiority:** A class action is vastly superior to other available means for fair and
4 efficient adjudication of the class members' claims and would be beneficial to the parties and the
5 Court. Class action treatment will allow a number of similarly situated persons to simultaneously and
6 efficiently prosecute their common claims in a single forum without the unnecessary duplication of
7 effort and expense that numerous individual actions would entail. In addition, the monetary amounts
8 due to many individual class members are likely to be relatively small and would thus make it difficult,
9 if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action
10 will serve an important public interest by permitting class members to effectively pursue the recovery
11 of monies owed to them. Further, a class action will prevent the potential for inconsistent or
12 contradictory judgments inherent in individual litigation.

13 **GENERAL ALLEGATIONS**

14 27. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
15 statutory periods.

16 **Boot-Up Time Off-the Clock**

17 28. Plaintiff and Class members were not paid proper wages and overtime for all hours
18 worked, at the proper rates of pay. Plaintiff and class members were consistently required to perform
19 work, off-the-clock for which they were not paid wages. Specifically, Plaintiff and class members
20 experienced boot-up time, for the time clock, prior to clocking in for work and returning from unpaid
21 meal periods, and for which they were not paid wages. This uncompensated time caused Plaintiff and
22 class members to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling
23 Plaintiff and Class Members to minimum and overtime wages, which they were systemically denied.

24 **Boot-Up Time and Meal/Rest Periods**

25 29. Putative class members were not provided with meal periods of at least thirty (30)
26 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
27 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
28 take their meal periods, or that advised putative class members of their meal and rest period rights;

1 and (3) Defendants' practice of requiring putative class members to continue working through their
2 meal and rest periods due to the excessive workload.

3 30. Additionally, the uncompensated time spent waiting for the time clock to boot-up
4 denied Plaintiff and class members the opportunity to take their full, duty free, 30-minute meal periods
5 and prior to the completion of their fifth hour of work.

6 31. Putative class members were not provided with rest periods of at least ten (10) minutes
7 for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not
8 scheduling each rest period as part of each work shift, including second rest breaks for shifts of six
9 (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to
10 take their rest periods, or that properly advised putative class members of their rest period rights; (3)
11 Defendants' policy and practice of requiring putative class members to remain on the premises during
12 their rest breaks; (4) Defendants' policy and practice of requiring putative class members to continue
13 working through their rest breaks due to the excessive workload.

14 32. Additionally, the uncompensated time spent waiting for the time clock to boot-up
15 denied Plaintiff and class members the opportunity to take their full, duty free, 10-minute rest periods,
16 as required by law.

17 33. Furthermore, and as discussed above, Defendants failed to pay Plaintiff and class
18 members premium pay wages at their appropriate regular rates of pay for each meal and rest period
19 denied.

20 **Wage Statements**

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

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

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

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

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

39. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff's and Class Members' wage statement were only provided in electronic format in violation of Labor Code § 226.

Expense Reimbursement

40. Plaintiff and class members were required to incur necessary business expenses in executing their duties under Defendant's employ, and for which they were reimbursed. Specifically, Plaintiff and class members had to use their personal cellular telephones and vehicles in executing their duties under Defendants' employ. Plaintiff and class members were never reimbursed for these necessary business expenditures.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiff and Meal Period Sub-Class)

41. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

10 45. Compensation for missed meal periods constitutes wages within the meaning of Labor
11 Code section 200.

12 46. Labor Code section 1198 makes it unlawful to employ a person under conditions that
13 violate the applicable Wage Order.

14 47. Section 11 of the applicable Wage Order states:

15 “No employer shall employ any person for a work period of more than
16 five (5) hours without a meal period of not less than 30 minutes, except
17 that when a work period of not more than six (6) hours will complete
18 the day’s work the meal period may be waived by mutual consent of
19 the employer and employee. Unless the employee is relieved of all duty
20 during a 30 minute meal period, the meal period shall be considered an
21 ‘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.”

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

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

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

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

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

10 53. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
11 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
12 regular rates of pay when required meal periods were not provided.

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

16 55. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
17 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the
18 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST PERIODS**

21 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

22 **(Plaintiff and Rest Period Sub-Class)**

23 56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
24 herein.

25 57. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
26 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
27 Code and the applicable Wage Order.

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1 58. Section 12 of the applicable Wage Order imposes an affirmative obligation on
2 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
3 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
4 middle of each work period insofar as practicable.

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

9 60. Compensation for missed rest periods constitutes wages within the meaning of Labor
10 Code section 200.

11 61. Labor Code section 1198 makes it unlawful to employ a person under conditions that
12 violate the Wage Order.

13 62. Plaintiff alleges that, at all relevant times during the applicable limitations period,
14 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
15 with net rest period of at least ten uninterrupted minutes for each four hour work period, or major
16 fraction thereof, as required by the applicable Wage Order.

17 63. Plaintiff and **Rest Period Sub-Class** members were not provided with rest periods of
18 at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
19 Defendants' policy of not scheduling each rest period as part of each work shift, including second
20 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
21 encouraged employees to take their rest periods, or that properly advised **Rest Period Sub-Class**
22 members of their rest period rights; (3) Defendants' policy and practice of requiring **Rest Period**
23 **Sub-Class** members to remain on the premises during their rest breaks; (4) Defendants' policy and
24 practice of requiring **Rest Period Sub-Class** members to continue working through their rest breaks
25 due to the excessive workload

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

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

(Plaintiff and Hourly Employee Class)

67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

70. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

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

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

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1 73. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
2 than the minimum wage required under the applicable Wage Order for all hours worked during a
3 payroll period.

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

7 75. Labor Code section 1198 makes it unlawful for employers to employ employees under
8 conditions that violate the applicable Wage Order.

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

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

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

20 79. Labor Code section 510 and Section 3 of the applicable Wage Order also require
21 employers to pay non-exempt employees overtime wages of no less than two times their respective
22 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
23 worked in excess of eight hours on a seventh consecutive workday during the workweek.

24 80. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
25 centrally devised policies and practices to him and **Hourly Employee Class** members with respect to
26 working conditions and compensation arrangements.

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1 81. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
2 **Employee Class** members for all time worked, including but not limited to, overtime hours at
3 statutory and/or agreed rates.

4 82. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
5 overtime for all hours worked, at the proper rates of pay. Plaintiff and **Hourly Employee Class**
6 members were consistently required to perform work, off-the-clock for which they were not paid
7 wages. Specifically, Plaintiff and **Hourly Employee Class** members experienced boot-up time, for
8 the time clock, prior to clocking in for work and returning from unpaid meal periods, and for which
9 they were not paid wages. This uncompensated time caused Plaintiff and **Hourly Employee Class**
10 members to work in excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff
11 and **Hourly Employee Class** members to minimum and overtime wages, which they were
12 systemically denied.

13 83. Plaintiff and **Hourly Employee 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 **Hourly**
15 **Employee Class** members to overtime wages.

16 84. 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 85. 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 86. 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.

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

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

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

89. 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
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1 electronic wage statements retain the ability to easily access the information and convert the electronic
2 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

3 90. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
5 wage statements as described above. Additionally, the wage statements issued to class members
6 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
7 above.

8 91. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
9 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
10 Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only
11 provided in electronic format in violation of Labor Code § 226.

12 92. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
13 **Statement Class** members with accurate written wage statements were intentional in that Defendants
14 have the ability to provide them with accurate wage statements but have intentionally provided them
15 with written wage statements that Defendants have known do not comply with Labor Code section
16 226(a).

17 93. Plaintiff and **Wage Statement Class** members have suffered injuries, in that
18 Defendants have violated their legal rights to receive accurate wage statements and have misled them
19 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
20 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
21 discovery and mathematical computations to determine the amount of wages owed, has caused
22 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
23 submission of inaccurate information about wages and deductions to federal and state government
24 agencies.

25 94. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
26 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
27 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period

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1 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
2 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

3 **FIFTH CAUSE OF ACTION**

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

5 **(Lab. Code §§ 201-203)**

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

7 95. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
8 herein.

9 96. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
10 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
11 earned and unpaid before termination or resignation.

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

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

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

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

24 101. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
25 timely pay all final wages to him and **Waiting Time Penalties Sub-Class** members have been willful
26 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
27 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
28 requirements.

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

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

SIXTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Expense Reimbursement Class)

104. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

105. Labor Code section 2802(a) states:

"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

106. At all relevant times during the applicable limitations period, Plaintiff and the **Expense Reimbursement Class** members incurred necessary business-related expenses and costs in executing their duties under Defendants' employ. Specifically, Plaintiff and **Expense Reimbursement Class** members had to use their personal cellular telephones and vehicles in executing their duties under Defendants' employ. Plaintiff and **Expense Reimbursement Class** members were never reimbursed for these necessary business expenditures. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class** members for all necessary expenses incurred in the discharge of their duties.

107. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such expenditures.

108. Plaintiff is informed and believes that, during the applicable limitations period, Defendants maintained a policy or practice of not reimbursing Plaintiff and **Expense Reimbursement Class** members for all necessary business expenses.

109. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to restitution for all unpaid amounts due and owing to within four years of the date of the filing of the Complaint and until the date of entry of judgment.

110. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seek interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(Plaintiff and UCL Class)

111. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

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

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

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

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

1 118. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
2 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
3 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802
4 which make it a misdemeanor to commit the Labor Code violations alleged herein.

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

9 120. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
10 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
11 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
12 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
13 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
14 similarly situated persons in a class action proceeding.

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

18 122. Plaintiff is informed and believes that other similarly situated persons have been
19 subject to the same unlawful policies or practices of Defendants.

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

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

26 125. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
27 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
28 Defendants, and each of them, and their agents and employees, from further violations of the Labor

1 Code and applicable Wage Orders.

2 126. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
3 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
4 Defendants, and each of them, and their agents and employees, from further violations of the Labor
5 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
6 order permanently enjoining Defendants, and each of them, and their respective agents and
7 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
8 Wage Orders.

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

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

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

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

23 **EIGHTH CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698, et seq.)**

26 **(Plaintiff Against All Defendants)**

27 131. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

28 132. At all relevant times, Plaintiff and the other aggrieved employees have been non-

1 exempt employees of Defendant entitled to the full meal period protections of both the Labor Code
2 and the applicable Industrial Welfare Commission Wage Order.

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

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

12 135. Compensation for missed meal periods constitutes wages within the meaning of Labor
13 Code § 200.

14 136. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
15 the applicable Wage Order.

16 137. Section 11 of the applicable Wage Order states:

17 No employer shall employ any person for a work period of more than
18 five (5) hours without a meal period of not less than 30 minutes, except
19 that when a work period of not more than six (6) hours will complete
20 the day’s work the meal period may be waived by mutual consent of
21 the employer and employee. Unless the employee is relieved of all duty
22 during a 30 minute meal period, the meal period shall be considered an
23 ‘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.

24 138. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
25 agreement. Plaintiff is informed and believes that, at all relevant times, the other aggrieved employees
26 were not subject to valid on-duty meal period agreements with Defendants.

27 139. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of not providing Plaintiff and the other aggrieved

1 employees with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
2 hour work period, as required by Labor Code § 512 ad the applicable Wage Order. Plaintiff and the
3 other aggrieved employees were required to perform work during their unpaid meal periods which
4 they were systemically denied.

5 140. The other aggrieved employees were not provided with meal periods of at least thirty
6 (30) minutes for each five (5) hour work period due to: (1) Defendants' policy of not scheduling each
7 meal period as part of each work shift; (2) no formal written meal policy that encouraged employees
8 to take their meal periods, or that advised the other aggrieved employees of their meal and rest period
9 rights; and (3) Defendants' practice of requiring the other aggrieved employees to continue working
10 through their meal and rest periods due to the excessive workload. Additionally, Plaintiff and the
11 other aggrieved employees were not provided with the opportunity to take their meal periods prior to
12 the completion of their fifth hour work, nor were they allowed to leave the premises during meal
13 periods.

14 141. Plaintiff alleges that, at all relevant times during the applicable limitations period,
15 Defendants maintained a policy or practice of failing to pay premium wages to the other aggrieved
16 employees when they worked five (5) hours without clocking out for any meal period.

17 142. Plaintiff alleges that, at all relevant times during the applicable limitations period,
18 Defendants maintained a policy or practice of not providing Plaintiff and the other aggrieved
19 employees with a second meal period when they worked shifts of ten or more hours and failed to pay
20 them premium wages as required by Labor Code 512 and the applicable Wage Order.

21 143. Moreover, Defendants written policies fail to inform Plaintiff and the other aggrieved
22 employees of their meal period rights under the Labor Code and applicable Wage Orders.

23 144. At all relevant times, Defendants failed to pay Plaintiff and the other aggrieved
24 employees additional premium wages, and/or were not paid premium wages at the employees' regular
25 rates of pay when required meal periods were not provided.

26 145. 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

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1 minutes of net rest time for each four-hour work period, or major fraction thereof, that must be in the
2 middle of each work period insofar as practicable.

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

7 147. Compensation for missed rest periods constitutes wages within the meaning of Labor
8 Code § 200.

9 148. Labor Code § 1198 makes it unlawful to employ a person under conditions that violate
10 the Wage Order.

11 149. Plaintiff alleges that, at all relevant times during the applicable limitations period,
12 Defendants maintained a policy or practice of not providing Plaintiff and the other aggrieved
13 employees with net rest period of at least ten uninterrupted minutes for each four-hour work period,
14 or major fraction thereof, as required by the applicable Wage Order.

15 150. Plaintiff and the other aggrieved employees were not provided with rest periods of at
16 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
17 Defendants' policy of not scheduling each rest period as part of each work shift, including second
18 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
19 encouraged employees to take their rest periods, or that properly advised Plaintiff and the other
20 aggrieved employees of their rest period rights; (3) Defendants' policy and practice of requiring
21 Plaintiff and the other aggrieved employees to remain on the premises during their rest breaks; (4)
22 Defendants' policy and practice of requiring Plaintiff and the other aggrieved employees to continue
23 working through their rest breaks due to the excessive workload

24 151. At all relevant times, Defendants failed to pay Plaintiff and the other aggrieved
25 employees additional premium wages when required rest periods were not provided.

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

1 153. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
2 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
3 that an employer has actual or constructive knowledge that employees are working.

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

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

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

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

15 158. Labor Code § 1198 makes it unlawful for employers to employ employees under
16 conditions that violate the applicable Wage Order.

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

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

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

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1 162. Labor Code § 510 and § 3 of the applicable Wage Order also require employers to pay
2 non-exempt employees overtime wages of no less than two times their respective regular rates of pay
3 for all hours worked in excess of twelve hours in one workday and for all hours worked in excess of
4 eight hours on a seventh consecutive workday during the workweek.

5 163. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
6 centrally devised policies and practices to him and the other aggrieved employees with respect to
7 working conditions and compensation arrangements.

8 164. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and the other
9 aggrieved employees for all time worked, including but not limited to, overtime hours at statutory
10 and/or agreed rates. Plaintiff and the other aggrieved employees were not paid proper wages and
11 overtime for all hours worked, at the proper rates of pay.

12 165. Defendants implemented a common policy and practice requiring Plaintiff and the
13 other aggrieved employees to perform work-related duties during unpaid meal periods, which they
14 were systemically denied. Plaintiff and the other aggrieved employees were never paid wages for
15 these hours worked. As such, Plaintiff and the other aggrieved employees were not paid proper wages
16 and overtime for all hours worked, at the proper rates of pay. Plaintiff and the other aggrieved
17 employees were consistently required to work in excess of eight (8) hours a day and/or forty (40)
18 hours a week, entitling Plaintiff and the other aggrieved employees to overtime wages, which they
19 were systemically denied.

20 166. Labor Code § 226(a) states:

21 An employer, semimonthly or at the time of each payment of wages,
22 shall furnish to his or her employee, either as a detachable part of the
23 check, draft, or voucher paying the employee's wages, or separately if
24 wages are paid by personal check or cash, an accurate itemized
25 statement in writing showing (1) gross wages earned, (2) total hours
26 worked by the employee, except as provided in subdivision (j), (3) the
27 number of piece-rate units earned and any applicable piece rate if the
28 employee is 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 only 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

1 defined in subdivision (b) of Section 1682, the name and address of the
2 legal entity that secured the services of the employer, and (9) all
3 applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the
5 employee and, beginning July 1, 2013, if the employer is a temporary
6 services employer as defined in Section 201.3, the rate of pay and the
7 total hours worked for each temporary services assignment. The
8 deductions made from payment of wages shall be recorded in ink or
9 other indelible form, properly dated, showing the month, day, and year,
10 and a copy of the statement and the record of the deductions shall be
11 kept on file by the employer for at least three years at the place of
12 employment or at a central location within the State of California. For
13 purposes of this subdivision, 'copy' includes a duplicate of the itemized
14 statement provided to an employee or a computer-generated record that
15 accurately shows all of the information required by this subdivision.

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

22 168. Plaintiff is informed and believes that, at all relevant times during the applicable
23 limitations period, Defendants have failed to provide him and the other aggrieved employees with
24 written wage statements as described above. Additionally, the wage statements issued to Plaintiff and
25 the other aggrieved employees failed to account for the unpaid minimum wages, overtime, and
26 premium pay wages described above.

27 169. Plaintiff is informed and believes that Defendants' failure to provide him and the other
28 aggrieved employees with accurate written wage statements were intentional in that Defendants have
the ability to provide them with accurate wage statements but have intentionally provided them with
written wage statements that Defendants have known do not comply with Labor Code § 226(a).

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

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

1 172. At all relevant times, pursuant to Labor Code § 202, employees who have resigned
2 after giving at least seventy-two (72) hours' notice of resignation have been entitled to payment of all
3 final wages at the time of resignation.

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

7 174. Plaintiff is informed and believes that, at all relevant times during the applicable
8 limitations period, Defendants have maintained a policy or practice of paying Plaintiff and the other
9 aggrieved employees their final wages without regard to the requirements of Labor Code §§ 201 or
10 202 by failing to timely pay them all final wages.

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

15 176. During the applicable limitations period, Defendants have violated Labor Code
16 §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1197.1, and 1198.

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

21 178. Plaintiff, a former employee against whom 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 § 2699(c).

24 179. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
25 2699.3 by submitting written notice to the Labor and Workforce Development Agency via online
26 submission and to Defendants via certified mail.

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1 180. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff seeks the following civil penalties
2 for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174,
3 1194, 1197, 1197.1, and 1198:

- 4 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1174, 1194,
5 1198 and 2802, one hundred dollars (\$100) for each employee per pay period
6 for each initial violation and two hundred dollars (\$200) for each employee per
7 pay period for each subsequent violation (penalties set by Labor Code §
8 2699(f)(2));
- 9 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
10 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 11 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
12 employee for each initial violation that was neither willful nor intentional, two
13 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
14 withheld from each employee, for each initial violation that was either willful
15 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
16 five percent (25%) of the amount unlawfully withheld from each employee,
17 for each subsequent violation, regardless of whether the subsequent violation
18 was either willful or intentional (penalties set by Labor Code § 210);
- 19 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
20 employee for each initial violation that was neither willful nor intentional, two
21 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
22 the amount unlawfully withheld from each employee, for each initial violation
23 that was either willful or intentional, and two hundred dollars (\$200) for each
24 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
25 from each employee, for each subsequent violation, regardless of whether the
26 subsequent violation was either willful or intentional (penalties set by Labor
27 Code § 225.5);

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- v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);
- vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);
- vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);
- viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, all other aggrieved employees, the State of California, and the general public, prays for relief and judgment against Defendants as follows:

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;

- (6) Liquidated damages;
- (7) Unreimbursed expenses;
- (8) Restitution;
- (9) Declaratory relief;
- (10) Pre-judgment interest;
- (11) Statutory penalties;
- (12) Civil penalties
- (13) Costs of suit;
- (14) Reasonable attorneys' fees; and
- (15) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Dated: September 20, 2021

SETAREH LAW GROUP



Shaun Setareh
David Keledjian
Attorneys for Plaintiff
DOUGLAS ESCALANTE

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PROOF OF SERVICE

I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 9665 Wilshire Blvd., Suite 430 Beverly Hills, CA 90212

On September 20, 2021, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

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

Brian D. Peters
bpeters@kdvlaw.com
Allyson K. Thompson
athompson@kdvlaw.com
Rosely George
rgeorge@kdvlaw.com
KAUFMAN DOLOWICH & VOLUCK
LLP
11755 Wilshire Blvd., Suite 2400
Los Angeles, CA 9025
**Counsel for Defendant IMOBILE OF
CA, LLC**

[X] ONLY BY ELECTRONIC TRANSMISSION

Pursuant to the Court's August 12, 2021 Order authorizing Electronic Service, the above-named documents have been electronically served on counsel of record by transmission on Case Anywhere system on the date below. The transmission of these documents to Case Anywhere system was reported complete and a copy of the Case Anywhere transaction receipt will be maintained along with the original document(s) and proof of service in our office.

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

Executed on September 20, 2021, at Beverly Hills, California.



Lauren Farrington