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From: Shaun Setareh

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THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG21102760

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11
12 EMILY SANTOS, on behalf of herself and all
13 others similarly situated,14 *Plaintiff,*

15 vs.

16 INTELLIPOWER, INC., a California
17 corporation; AMETEK, INC., a Delaware
18 corporation; and DOES 1 through 50,
19 inclusive,20 *Defendants.*

Case No. RG21102760

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)**CLASS AND REPRESENTATIVE 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); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
7. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff EMILY SANTOS (“Plaintiff”), on behalf of herself, all others similarly situated, the
2 general public, and the State of California complains and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants INTELLIPOWER, INC., a
5 California corporation; AMETEK, INC., a Delaware corporation; and DOES 1 through 50, inclusive,
6 (collectively referred to as “Defendants”) for alleged violations of the California Labor Code and
7 California Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

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

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

22 **JURISDICTION AND VENUE**

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

26 3. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure §§
27 393(a), 395(a) and 395.5 in that liability arose this county because at least some of the transactions
28 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

1 maintains offices, transacts business and/or has an agent therein.

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

5 **PARTIES**

6 5. Plaintiff EMILY SANTOS is, and at all relevant times mentioned herein, an individual
7 residing in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges that Defendant
9 INTELLIPOWER, INC. is, and at all relevant times mentioned herein, a California corporation doing
10 business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges that Defendant AMETEK,
12 INC. is, and at all relevant times mentioned herein, a Delaware corporation doing business in the State
13 of California.

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

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

28 10. 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.

11. 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.

12. **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.

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.

13. **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.

14. **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

1 exceeds the minimum required for numerosity under California law.

2 15. **Commonality and Predominance:** Common questions of law and fact exist as to all
3 class members and predominate over any questions which affect only individual class members.

4 These common questions include, but are not limited to:

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

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

28 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in

1 that she has no interests that are adverse to, or otherwise conflict with, the interests of absent class
2 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
3 and adequately represent and protect the interests of the other class members.

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

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

18 **GENERAL ALLEGATIONS**

19 20. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
20 statutory periods.

21 **Off-the Clock and Time Clock**

22 21. Plaintiff and Class members were not paid proper wages and overtime for all hours
23 worked, at the proper rates of pay. Plaintiff and class members were consistently required to perform
24 work, off-the-clock for which they were not paid wages. Specifically, Plaintiff and class members
25 experienced were required to wait in line, at the time clock, due to overcrowding, prior to clocking in
26 both at the start of their shifts, and returning from unpaid meal periods, and for which they were not
27 paid wages. Additionally, Plaintiff and class members were required to perform work related duties
28 during unpaid meal periods, again for which they were not paid wages. This uncompensated time

1 caused Plaintiff and class members to work in excess of eight (8) hours a day and/or forty (40) hours
2 a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they were
3 systemically denied.

4 **Off-the-Clock and Donning/Doffing**

5 22. Plaintiff and class members were required to perform work related duties both prior to
6 and after their scheduled shift. Specifically, Plaintiff and class members were required to put on their
7 protective work clothing prior to clocking in for the day (as well as prior to returning from unpaid
8 meal periods), and remove the protective clothing after clocking out for the day. Plaintiff and class
9 members were never paid wages for these working hours spent donning and doffing under
10 Defendants' employ. This uncompensated time caused Plaintiff and class members to work in excess
11 of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members to
12 minimum and overtime wages, which they were systemically denied.

13 **Off-the-Clock and Meal/Rest Periods**

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

20 24. Additionally, Plaintiff and class members were required to perform work related duties
21 during unpaid meal periods, again for which they were not paid wages. This uncompensated time
22 caused Plaintiff and class members to work in excess of eight (8) hours a day and/or forty (40) hours
23 a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they were
24 systemically denied.

25 25. Furthermore, the uncompensated time spent waiting at the time clock, and for putting
26 on their work related protective clothing, denied Plaintiff and class members the opportunity to take
27 their full, duty free, 30-minute meal periods and prior to the completion of their fifth and tenth hours
28 of work.

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

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

Wage Statements

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

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

30. 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.

31. 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.

32. 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.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiff and Meal Period Sub-Class)

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

34. 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.

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

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

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

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

39. Section 11 of the applicable Wage Order states:

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

1 relieved of all duty and when by written agreement between the parties an on-the-job
2 paid meal period is agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

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

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

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

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

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

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

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

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

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

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

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

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

15 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 75. Plaintiff and **Hourly Employee Class** members were consistently required to work in
18 excess of eight (8) hours a day and/or forty (40) hours a week, entitling Plaintiff and **Hourly**
19 **Employee Class** members to overtime wages.

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

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

27 78. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
28 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and

1 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

2 **FOURTH CAUSE OF ACTION**

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

4 **(Lab. Code § 226)**

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

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

8 80. Labor Code section 226(a) states:

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

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

82. Plaintiff is informed and believes that, at all relevant times during the applicable

1 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
2 wage statements as described above. Additionally, the wage statements issued to class members
3 failed to account for the unpaid minimum wages, overtime, and premium pay wages described
4 above.

5 83. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
6 **Statement Class** members with accurate written wage statements were intentional in that Defendants
7 have the ability to provide them with accurate wage statements but have intentionally provided them
8 with written wage statements that Defendants have known do not comply with Labor Code section
9 226(a).

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

18 85. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
19 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
20 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
21 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
22 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

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1 **FIFTH CAUSE OF ACTION**

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

3 **(Lab. Code §§ 201-203)**

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

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

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

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

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

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

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

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

27 93. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
28 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their

1 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

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

5 **SIXTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

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

8 **(Plaintiff and UCL Class)**

9 95. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
10 herein.

11 96. Business and Professions Code section 17200 defines "unfair competition" to include
12 any unlawful business practice.

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

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

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

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

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

24 102. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
25 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
26 226.6, 226.7, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 1199
27 which make it a misdemeanor to commit the Labor Code violations alleged herein.

28 103. Defendants have committed criminal conduct through their policies and practices of,

1 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
2 employees with compliant meal and rest periods and pay non-exempt employees for all hours worked
3 at the proper rates of pay.

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

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

13 106. Plaintiff is informed and believes that other similarly situated persons have been
14 subject to the same unlawful policies or practices of Defendants.

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

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

21 109. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
22 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
23 Defendants, and each of them, and their agents and employees, from further violations of the Labor
24 Code and applicable Wage Orders.

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

1 order permanently enjoining Defendants, and each of them, and their respective agents and
2 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
3 Wage Orders.

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

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

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES**

20 **(Lab. Code §§ 2698 et seq.)**

21 115. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

22 116. During the applicable limitations period, Defendants have violated Labor Code §§
23 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, and 1198, and applicable
24 Industrial Welfare Commission Wage Orders.

25 117. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
26 **Error! Reference source not found.** and other current and former employees, to bring a
27 representative civil action to recover civil penalties pursuant to the procedures set forth in Labor
28 Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code

1 of Civil Procedure section 382.

2 118. Plaintiff, a former employee against whom Defendants committed one or more of the
3 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
4 within the meaning of Labor Code § 2699(c).

5 119. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
6 § 2699.3.

7 120. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
9 512, 1174, 1194, 1197, and 1198.

10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1174, 1194, and
11 1198, one hundred dollars (\$100) for each employee per pay period for each
12 initial violation and two hundred dollars (\$200) for each employee per pay
13 period for each subsequent violation (penalties set by Labor Code §
14 2699(f)(2));

15 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
16 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

17 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
18 employee for each initial violation that was neither willful nor intentional,
19 two hundred dollars (\$200) for each employee, plus 25% of the amount
20 unlawfully withheld from each employee, for each initial violation that was
21 either willful or intentional, and two hundred dollars (\$200) for each
22 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
23 from each employee, for each subsequent violation, regardless of whether the
24 subsequent violation was either willful or intentional (penalties set by Labor
25 Code § 210);

26 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
27 employee for each initial violation that was neither willful nor intentional,
28 two hundred dollars (\$200) for each employee, plus twenty-five percent

(25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

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.

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2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, the general public,
4 and the State of California prays for relief and judgment against Defendants as follows:

- 5 (1) An order that the action be certified as a class action;
6 (2) An order that Plaintiff be appointed class representative;
7 (3) An order that counsel for Plaintiff be appointed class counsel;
8 (4) Unpaid wages;
9 (5) Actual damages;
10 (6) Liquidated damages;
11 (7) Restitution;
12 (8) Declaratory relief;
13 (9) Pre-judgment interest;
14 (10) Civil penalties;
15 (11) Statutory penalties;
16 (12) Costs of suit;
17 (13) Reasonable attorneys' fees; and
18 (14) Such other relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff, on behalf of herself, all other similarly situated, the general public, and the State of
21 California, hereby demands a jury trial on all issues so triable.

22
23 Dated: October 1, 2021

SETAREH LAW GROUP

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27 SHAUN SETAREH
28 DAVID KELEDJIAN
Attorneys for Plaintiff
EMILY SANTOS

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On October 1, 2021, I served the foregoing documents described as:

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

[X] ONLY BY ELECTRONIC TRANSMISSION

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

Executed on October 1, 2021, at Beverly Hills, California.


Lauren Farrington