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County of Alameda

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By: Cheryl Clark,
Deputy Clerk

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 David Keledjian (SBN 309135)
david@setarehlaw.com
3 David Arakelyan (SBN 337076)
arakelyan@setarehlaw.com
4 SETAREH LAW GROUP
9665 Wilshire Blvd., Suite 430
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff MARVIN THOMPSON

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ALAMEDA

11 MARVIN THOMPSON, on behalf of himself
12 and all others similarly situated,

13 *Plaintiff,*

14 vs.

15 SF MARKETS, LLC, a Delaware
Corporation; and DOES 1 through 50,
16 inclusive,

17 *Defendants.*

Case No. **22CV016673**

CLASS ACTION COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Violation of Labor Code § 227.3;
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); and
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff MARVIN THOMPSON ("Plaintiff"), on behalf of himself, the State of California,
2 all others similarly situated, and the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class an representative action against Defendants SF MARKETS,
5 LLC, a Delaware Corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 "Defendants") for alleged violations of the California Labor Code and California Business and
7 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 pay vested vacation wages upon separation of employment; 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 action to recover
19 unpaid wages, liquidated damages, penalties, restitution and related relief on behalf of himself, all
20 others similarly situated, and the general public.

21 **2. JURISDICTION AND VENUE**

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

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

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

6. Finally, venue and jurisdiction is proper before this Court under C.C.P. §§ 1281.97 and 1281.98, as Defendant has waived the arbitration forum as a matter of law.

PARTIES

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

8. Plaintiff is informed and believes, and thereupon alleges that Defendant SF MARKETS, LLC, is, and at all relevant times mentioned herein, a Delaware corporation doing business in the State of California.

9. 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.

10. 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.

11. 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

1 and omissions alleged herein.

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

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

8 **Hourly Employee Class:** All persons employed by Defendants, collectively or separately,
9 and/or any staffing agencies and/or any other third parties in hourly or non-exempt positions
10 in California beginning on June 23, 2017¹, and ending on the date that final judgment is
entered in this action ("Hourly Employee Class").

11 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
12 shift in excess of five hours beginning on June 23, 2017, and ending on the date that
final judgment is entered in this action

13 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
14 of at least three and one-half (3.5) hours beginning on June 23, 2017, and ending on
the date that final judgment is entered in this action.

15 **Vacation Pay Sub-Class:** All **Hourly Employee Class** members who earned
16 vacation pay beginning on June 23, 2017, and ending on the date that final judgment
is entered in this action

17 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
18 separated from their employment with Defendants beginning on June 23, 2018, and
ending when final judgment is entered.

19 **Wage Statement Class:** All persons employed by Defendants in California during the period
20 beginning on June 23, 2020, and ending when final judgment is entered.

21 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
22 beginning on June 23, 2017, and ending on the date that final judgment is entered in this
action.

23 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
24 to amend or modify the class definitions with greater specificity, by further division into sub-classes
25

26 ¹ The statute of limitations periods for all claims alleged herein relate back to the original filing of
27 Plaintiff's initial class action complaint, filed on June 22, 2021, Alameda County Case No.:
28 RG21102471, and pursuant to C.C.P. §§ 1281.97(c) and 1281.98 (b)(1). Accordingly, Plaintiff has
elected to proceed with these claims in Court by filing this action. (*Id.*).

1 and/or by limitation to particular issues.

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

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

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

Defendants may have acquired from them through unfair competition;

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

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

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

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

GENERAL ALLEGATIONS

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

Off-the Clock

22. Plaintiff and Class members were not paid proper wages and overtime for all hours

1 worked, at the proper rates of pay. Plaintiff and class members were consistently required to perform
2 work, off-the-clock for which they were not paid wages. Specifically, Plaintiff and class members
3 experienced were required to wait in line, at the tie clock, prior to clocking in, for which they were
4 not paid wages. Additionally, Plaintiff and class members were required to perform work related
5 duties during unpaid meal periods, again for which they were not paid wages. This uncompensated
6 time caused Plaintiff and class members to work in excess of eight (8) hours a day and/or forty (40)
7 hours a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they
8 were systemically denied.

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

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

16 24. Additionally, the uncompensated time spent waiting at the time clock denied Plaintiff
17 and class members the opportunity to take their full, duty free, 30-minute meal periods and prior to
18 the completion of their fifth hour of work.

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

27 26. Additionally, the uncompensated time spent waiting for the time clock to boot-up
28 denied Plaintiff and class members the opportunity to take their full, duty free, 10-minute rest periods,

1 as required by law.

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

5 **Unpaid Vacation Wages**

6 28. Plaintiff and class members earned vested vacation wages during their employment
7 with Defendants. However, Defendants implemented a common policy and practice of failing to pay
8 all vested vacation wages owed to Plaintiff and class members upon their separation of employment.

9 **Electronic and Non-Compliant Wage Statements**

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

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

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

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

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

27 34. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
28 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.

1 Plaintiff's and Class Members' wage statement were only provided in electronic format in violation
2 of Labor Code § 226.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

7 35. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if
8 fully alleged herein.

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

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

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

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

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

25 41. Section 11 of the applicable Wage Order states:

26 "No employer shall employ any person for a work period of more than five (5) hours
27 without a meal period of not less than 30 minutes, except that when a work period of
28 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

1 an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall
2 be permitted only when the nature of the work prevents an employee from being
3 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."

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

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

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

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

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

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

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

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

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 204, 223, 226.7 and 1198)
(Plaintiff and Rest Period Sub-Class)

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

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

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

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

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

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

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

57. Plaintiff and **Rest Period Sub-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

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

12 60. 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 61. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

21 62. 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 63. 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 64. 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 65. 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 66. 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 67. 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 68. 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 69. Labor Code section 1198 makes it unlawful for employers to employ employees under
15 conditions that violate the applicable Wage Order.

16 70. 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 71. 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 72. 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 73. 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 74. 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 75. 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 76. 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 experienced waiting time at the
13 time clock due to overcrowding, prior to clocking in for work and returning from unpaid meal periods,
14 and for which they were not paid wages. Additionally, Plaintiff and **Hourly Employee Class**
15 members were consistently required to perform work related duties during unpaid meal periods,
16 which they were systemically denied, and for which they were not pad wages. These uncompensated
17 hours caused Plaintiff and **Hourly Employee Class** members to work in excess of eight (8) hours a
18 day and/or forty (40) hours a week, entitling Plaintiff and **Hourly Employee Class** members to
19 minimum and overtime wages, which they were systemically denied.

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

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

27 79. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
28 behalf of herself and **Hourly Employee Class** members, seek to recover unpaid straight time and

1 overtime wages, interest thereon and costs of suit.

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

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY VACATION WAGES**

7 **(Lab. Code § 227.3)**

8 **(Plaintiff and Vacation Pay Class)**

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

11 82. California Labor Code section 227.3 provides:

12 Unless otherwise provided by a collective-bargaining agreement,
13 whenever a contract of employment or employer policy provides for
14 paid vacations, and an employee is terminated without having taken off
15 his vested vacation time, all vested vacation shall be paid to him as
16 wages at his final rate in accordance with such contract of employment
17 or employer policy respecting eligibility or time served; provided,
18 however, that an employment contract or employer policy shall not
19 provide for forfeiture of vested vacation time upon termination. The
20 Labor Commissioner or a designated representative, in the resolution
21 of any dispute with regard to vested vacation time, shall apply the
22 principles of equity and fairness.

23 83. At all relevant times during the applicable limitations period, Plaintiff and members
24 of the **Vacation Pay Class** accrued vacation time during their employment with Defendants.

25 84. As a result of their policies and practices, Plaintiff is informed and believes and
26 thereon alleges that Defendants failed to pay him and **Vacation Pay Class** members for all accrued
27 vacation wages.

28 85. By reason of the above, Plaintiffs and the members of the **Vacation Pay Class** are
entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of the
filing of the Complaint until the date of entry of judgment.

86. Plaintiff, on behalf of himself and the members of the **Vacation Pay Class**, seeks
interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor
Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure

1 section 1021.5.

2 **FIFTH CAUSE OF ACTION**

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

4 **(Lab. Code § 226)**

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

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

8 88. 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.”

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

28 90. 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 91. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
6 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
7 Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only
8 provided in electronic format in violation of Labor Code § 226.

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

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

22 94. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
23 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
24 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
25 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
26 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

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

2 103. 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 **SEVENTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION**

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

8 **(Plaintiff and UCL Class)**

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

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

13 106. 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.

17 107. 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.

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

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

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

24 111. 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, 227.3, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and
27 1199 which make it a misdemeanor to commit the Labor Code violations alleged herein.

28 112. 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.

4 113. 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.

10 114. 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.

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

15 116. 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.

18 117. 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.

21 118. 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.

25 119. 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.

4 120. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
5 himself 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.

8 121. 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.

11 122. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
12 himself 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.

15 123. 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 **EIGHTH CAUSE OF ACTION**

19 **CIVIL PENALTIES**

20 **(Lab. Code §§ 2698 *et seq.*)**

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

22 125. During the applicable limitations period, Defendants have violated Labor Code §§
23 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, and 1198.

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

28 127. Plaintiff, a former employee against whom Defendants committed one or more of the

1 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
2 within the meaning of Labor Code § 2699(c).

3 128. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
4 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
5 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
6 intervene.

7 129. 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, 227.3,
9 510, 512, 1194, 1197, and 1198:

10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 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 thirty
16 (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, two
19 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
20 withheld from each employee, for each initial violation that was either willful
21 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
22 five percent (25%) of the amount unlawfully withheld from each employee,
23 for each subsequent violation, regardless of whether the subsequent violation
24 was either willful or intentional (penalties set by Labor Code § 210);

25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional, two
27 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
28 the amount unlawfully withheld from each employee, for each initial violation

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

6 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
7 citation, two hundred and fifty dollars (\$250) for each employee for each
8 violation. Alternatively, if an initial citation or its equivalent occurred before
9 the filing of this action, one thousand dollars (\$1,000) for each employee for
10 each violation (penalties set by Labor Code § 226.3);

11 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
12 employee for each initial pay period for which the employee was underpaid,
13 and one hundred dollars (\$100) for each employee for each subsequent pay
14 period for which the employee was underpaid (penalties set by Labor Code §
15 558);

16 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
17 aggrieved employee for each initial violation of Labor Code § 1197 that was
18 intentional and two hundred and fifty dollars (\$250) for each aggrieved
19 employee per pay period for each subsequent violation of Labor Code § 1197,
20 regardless of whether the initial violation was intentional (penalties set by
21 Labor Code § 1197.1);

22 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
23 attorneys' fees and costs in connection with Plaintiff's claims for civil
24 penalties.

25 **PRAYER FOR RELIEF**

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

28 (1) An order that the action be certified as a class action;

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

14 **DEMAND FOR JURY TRIAL**

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

17
18 Dated: August 22, 2022

SETAREH LAW GROUP

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22 Shaun Setareh
23 David Keledjian
24 David Arakelyan
25 Attorneys for Plaintiff
26 MARVIN THOMPSON
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