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CASE NUMBER:

RG21107400

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

12 GABRIEL SOUZA AROCHA, on behalf of
13 himself, all others similarly situated, and the
14 general public,

15 *Plaintiff,*

16 vs.

17 OVERTON SECURITY SERVICES, INC., a
18 California corporation; and DOES 1 through
19 50, inclusive,

20 *Defendants.*
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Case No. RG21107400

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)**CLASS AND REPRESENTATIVE ACTION****FIRST AMENDED COMPLAINT**

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 (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Indemnify (Lab. Code § 2802);
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);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

COMES NOW, Plaintiff GABRIEL SOUZA AROCHA ("Plaintiff"), on behalf of himself, all others similarly situated, the general public, and the State of California complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class and representative action against Defendant OVERTON SECURITY SERVICES, INC., ("OVERTON") a California corporation, and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have

- (1) failed to provide him and all other similarly situated individuals with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (5) failed to pay them at least minimum wage for all hours worked;
- (6) failed to pay them overtime wages at the correct rate;
- (7) failed to pay them double time wages at the correct rate;
- (8) failed to pay them overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;
- (9) failed to pay them for all vested vacation pay;
- (10) failed to reimburse them for all necessary business expenses;
- (11) failed to provide them with accurate written wage statements; and
- (12) failed to pay them all of their final wages following separation of employment.

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

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1 other defendants, and in doing the things alleged herein, were acting within the course and scope of
2 such relationship and with the full knowledge, consent and ratification by such other defendants.

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

7 CLASS ALLEGATIONS

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

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

14 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing agencies
15 and/or any other third parties in hourly or non-exempt positions in California during the
Relevant Time Period.

16 **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in a
17 shift in excess of five hours during the **Relevant Time Period.**

18 **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a shift
of at least three and one-half (3.5) hours during the **Relevant Time Period.**

19 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class** members
20 employed by Defendants in California during the period beginning one year before
the filing of this action and ending when final judgment is entered.

21 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
22 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.

23 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
24 during the **Relevant Time Period.**

25 **Expense Reimbursement Class:** All persons employed by Defendants in California who
incurred business expenses during the **Relevant Time Period.**

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

2 13. **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
4 of 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 14. **Commonality and Predominance**: Common questions of law and fact exist as to
7 all 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 meal periods;
- 11 B. Whether Defendants maintained a policy or practice of failing to provide
12 employees with their rest periods;
- 13 C. Whether Defendants failed to pay premium wages to class members when
14 they have not been provided with required meal and/or rest periods;
- 15 D. Whether Defendants failed to pay minimum and/or overtime wages to class
16 members as a result of policies that fail to provide meal periods in accordance
17 with California law;
- 18 E. Whether Defendants failed to pay minimum and/or overtime wages to class
19 members for all time worked;
- 20 F. Whether Defendants used payroll formulas that systematically fail to account
21 for non-discretionary bonuses and/or other applicable remuneration when
22 calculating regular rates of pay for class members;
- 23 G. Whether Defendants failed to pay overtime wages to class members as a
24 result of incorrectly calculating their regular rates of pay;
- 25 H. Whether Defendants failed to pay premium wages to class members based on
26 their respective "regular rates of compensation" by not including
27 commissions and/or other applicable remuneration in calculating the rates at
28 which those wages are paid;

- I. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;
- J. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- K. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- L. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;
- M. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

15. **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 Labor Code and Business and Professions Code as alleged in this Complaint.

16. **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.

17. **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.

18. **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

1 duplication of effort and expense that numerous individual actions would entail. In addition, the
2 monetary amounts due to many individual class members are likely to be relatively small and would
3 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
4 Moreover, a class action will serve an important public interest by permitting class members to
5 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
6 potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **GENERAL ALLEGATIONS**

8 19. Plaintiff worked for Defendants as a non-exempt, hourly employee from
9 approximately October 24, 2019, through February 6, 2020.

10 **Missed Meal Periods**

11 20. Plaintiff and the putative class members were not provided with meal periods of at
12 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
13 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
14 shift with not enough workers; (3) imposing so much work on each employee such that it made it
15 unlikely that an employee would be able to take their breaks if they wanted to finish their work on
16 time; and (4) no formal written meal and rest period policy that encouraged employees to take their
17 meal and rest periods.

18 21. As a result of Defendants' policies and practice, Plaintiff and the putative class were
19 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
20 (5) hours worked due to complying with Defendants' productivity requirements that required
21 Plaintiff and the putative class to work through their meal periods in order to complete their
22 assignments on time.

23 **Missed Rest Periods**

24 22. Plaintiff and the putative class members were not provided with rest periods of at
25 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
26 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically
27 understaffing each work shift with not enough workers; (3) imposing so much work on each
28 employee such that it made it unlikely that an employee would be able to take their breaks if they

1 wanted to finish their work on time; and (4) no formal written meal and rest period policy that
2 encouraged employees to take their meal and rest periods.

3 23. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
4 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
5 due to complying with Defendants' productivity requirements that required Plaintiff and the
6 putative class to work through their rest periods in order to complete their assignments on time.

7 **Regular Rate of Pay**

8 24. The regular rate of pay under California law includes all remuneration for
9 employment paid to the employee. This requirement includes, but is not limited, to, commissions
10 and non-discretionary bonuses.

11 25. During the applicable limitations period, Defendants violated the rights of Plaintiff
12 and the putative class under the above-referenced Labor Code sections by failing to pay them
13 overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198
14 as a result of not correctly calculating their regular rate of pay to include all applicable
15 remuneration, including, but not limited to, non-discretionary bonuses and/or shift differential pay.

16 **Expense Reimbursement**

17 26. Plaintiff and the putative class members were required to utilize their own personal
18 vehicles to perform essential job duties, including surveilling their assigned area. The car provided
19 by Defendants was unusable due to its filth and vile smell as a result of Defendants' using the
20 company vehicle as their living quarters.

21 27. Plaintiff and the putative class members were not reimbursed for business expenses
22 incurred in maintaining their tools, including but not limited to, their personal vehicles.

23 28. In addition, Plaintiff and the putative class members were not paid at least two times
24 the minimum wage for all hours worked.

25 29. Defendants failed to reimburse Plaintiff and the putative class for such necessary
26 business expenses incurred by them, including but not limited to, mileage and gas as a result of
27 needing to use their personal vehicles.

Wage Statements

30. Plaintiff and the putative class were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226.

31. 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.

32. 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.

33. 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.

34. 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 §§ 004, 223, 226.7, 512 and 1198)

(Plaintiff and Meal Period Sub-Class)

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

36. 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.

37. 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

1 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
2 minutes for each work period of ten hours.

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

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

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

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

12 "No employer shall employ any person for a work period of more than five (5) hours
13 without a meal period of not less than 30 minutes, except that when a work period of
14 not more than six (6) hours will complete the day's work the meal period may be
15 waived by mutual consent of the employer and employee. Unless the employee is
16 relieved of all duty during a 30 minute meal period, the meal period shall be
17 considered an 'on duty' meal period and counted as time worked. An 'on duty' meal
18 period shall be permitted only when the nature of the work prevents an employee
19 from being relieved of all duty and when by written agreement between the parties
20 an on-the-job paid meal period is agreed to. The written agreement shall state that
21 the employee may, in writing, revoke the agreement at any time."

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

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

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

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

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

47. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **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)

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

49. 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.

50. 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.

51. 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).

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

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

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

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

9 56. 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 57. 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 himself and
14 **Rest 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 58. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
20 herein.

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

24 60. 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 61. 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

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

2 62. 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 63. 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
7 addition to the underlying unpaid minimum wages and interest thereon.

8 64. 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 65. 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 66. Labor Code section 1198 makes it unlawful for employers to employ employees
15 under conditions that violate the applicable Wage Order.

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

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

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

27 70. 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 71. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
4 centrally devised policies and practices to him and **Hourly Employee Class** members with respect
5 to working conditions and compensation arrangements.

6 72. 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 73. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
10 **Employee Class** members all earned wages every pay period at the correct rates, including
11 overtime rates, because Defendants directed, permitted or otherwise encouraged Plaintiff and
12 **Hourly Employee Class** members to perform off-the-clock work.

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

17 75. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
18 behalf of himself and **Hourly Employee Class** members, seek to recover unpaid straight time and
19 overtime wages, interest thereon and costs of suit.

20 76. The regular rate of pay under California law includes all remuneration for
21 employment paid to, on behalf of, the employee. This requirement includes but is not limited to,
22 commissions, non-discretionary bonuses, and shift differential pay.

23 77. During the applicable limitations period, Defendants violated the rights of Plaintiff
24 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
25 to pay them overtime wages for all overtime hours worked in violation of Labor Code sections 510,
26 1194 and 1198 by not correctly calculating their regular rate of pay to include all applicable
27 remuneration.

28 78. California law uses the terms "compensation" and "pay" interchangeably and

1 requires that all applicable remuneration be included when calculating an employee's regular rate of
2 pay.

3 79. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
4 compensation that did not reflect Plaintiff's regular rate as required by Labor Code section 226.7(b)
5 and Sections 11 and 12 of the applicable Wage Order on the occasions when Defendants paid him
6 premium wages in lieu of meal and/or rest periods.

7 80. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
8 during the applicable limitations period, Defendants maintained a policy or practice of paying
9 **Hourly Employee Class** members premium wages based on rates of compensation that have not
10 reflected Plaintiff's regular rate as required by Labor Code section 226.7(b) and Sections 11 and 12
11 of the applicable Wage Order on the occasions when Defendants paid them premium wages in lieu
12 of meal and/or rest periods.

13 81. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
14 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
15 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO INDEMNIFY**

18 **(Lab. Code § 2802)**

19 **(Plaintiff and Expense Reimbursement Class)**

20 82. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 83. Labor Code section 2802(a) states:

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

26 84. At all relevant times during the applicable limitations period, Plaintiff and the
27 **Expense Reimbursement Class** members incurred necessary business related expenses and costs,
28 including but not limited to, use of Plaintiff's personal vehicle.

1 85. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid
2 by Defendants was insufficient to indemnify Plaintiff and **Expense Reimbursement Class**
3 members for all necessary expenses incurred in the discharge of their duties.

4 86. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
5 by Defendants was insufficient to indemnify **Expense Reimbursement Class** members for all
6 necessary business expenses incurred in the discharge of their duties.

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

11 88. At all relevant times during the applicable limitations period, Defendants required
12 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain uniforms and
13 apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiff and
14 **Expense Reimbursement Class** members for all such expenditures.

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

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

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

24 **FIFTH CAUSE OF ACTION**

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

26 **(Lab. Code § 226)**

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

28 92. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged

1 herein.

2 93. Labor Code section 226(a) states:

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

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

23 95. Plaintiff is informed and believes that, at all relevant times during the applicable
24 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
25 members with written wage statements as described above.

26 96. Plaintiff is informed and believes that Defendants’ failure to provide him and **Wage**
27 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
28 that Defendants have the ability to provide them with accurate wage statements but have

1 intentionally provided them with written wage statements that Defendants have known do not
2 comply with Labor Code section 226(a).

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

11 98. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
12 **Statement Penalties Sub-Class** members, seek the greater of actual damages or \$50.00 for the
13 initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each
14 subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an
15 aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees
16 and costs.

17 **SIXTH CAUSE OF ACTION**

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

19 **(Lab. Code §§ 201-203)**

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

21 99. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

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

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

28 102. At all relevant times, pursuant to Labor Code section 202, employees who have

1 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
2 payment of all final wages at the time of resignation.

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

6 104. During the applicable limitations period, Defendants failed to pay Plaintiff all of him
7 final wages in accordance with the Labor Code by failing to timely pay him all of him final wages.

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

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

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

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

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

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1 119. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
2 employees and entitled to the full protections of both the Labor Code and the applicable Wage
3 Order.

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

10 121. 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'
13 conduct.

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

129. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

130. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of **Error! Reference source not found.** and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

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

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

133. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198 and 2802:

A. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and 2802, one hundred dollars (\$100) for each employee per pay period for each

1 initial violation and two hundred dollars (\$200) for each employee per pay
2 period for each subsequent violation (penalties set by Labor Code §
3 2699(f)(2));

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

6 C. For violations of Labor Code § 204, one hundred dollars (\$100) for each
7 employee for each initial violation that was neither willful nor intentional,
8 two hundred dollars (\$200) for each employee, plus 25% of the amount
9 unlawfully withheld from each employee, for each initial violation that was
10 either willful or intentional, and two hundred dollars (\$200) for each
11 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
12 from each employee, for each subsequent violation, regardless of whether the
13 subsequent violation was either willful or intentional (penalties set by Labor
14 Code § 210);

15 D. For violations of Labor Code § 223, one hundred dollars (\$100) for each
16 employee for each initial violation that was neither willful nor intentional,
17 two hundred dollars (\$200) for each employee, plus twenty-five percent
18 (25%) of the amount unlawfully withheld from each employee, for each
19 initial violation that was either willful or intentional, and two hundred dollars
20 (\$200) for each employee, plus twenty-five percent (25%) of the amount
21 unlawfully withheld from each employee, for each subsequent violation,
22 regardless of whether the subsequent violation was either willful or
23 intentional (penalties set by Labor Code § 225.5);

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

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

15 **PRAYER FOR RELIEF**

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

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

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

4 **DEMAND FOR JURY TRIAL**

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

7
8 Dated: September 30, 2021

SETAREH LAW GROUP

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10 A handwritten signature in dark ink, appearing to read 'S/15', is written over a horizontal line.

11
12 SHAUN SETAREH
13 THOMAS SEGAL
14 FARRAH GRANT
Attorneys for Plaintiff
GABRIEL SOUZA AROCHA

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On September 30, 2021, I served the foregoing documents described as:

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

[X] ONLY BY ELECTRONIC TRANSMISSION

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


Lauren Farrington