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

12 PELE HENDERSON, on behalf of himself
13 and all others similarly situated,

14 *Plaintiff,*

15 v.

16 SCOPELY, INC., a Delaware corporation; and
17 DOES 1 through 50, inclusive,

18 *Defendants.*

Case No. 21STCV29152

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

1 Plaintiff PELE HENDERSON ("Plaintiff"), on behalf of himself, all others similarly
2 situated, the general public, and the State of California complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against defendant SCOPELY,
5 INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to as
6 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
7 Defendants have

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

22 Based on these alleged violations, Plaintiff now brings this class action to recover unpaid wages,
23 restitution, civil and statutory penalties, and related relief on behalf of himself and all others
24 similarly situated.

25 JURISDICTION AND VENUE

26 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
27 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
28 State of California.

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

PARTIES

4. Plaintiff is and was, and at all relevant times mentioned herein, an individual residing in the State of California.

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

6. 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.

7. 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, 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.

CLASS ALLEGATIONS

8. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure § 382, because there is a well-defined community of interest among the persons who comprise the readily ascertainable classes defined below and because Plaintiff is

1 unaware of any difficulties likely to be encountered in managing this case as a class action.

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

4 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing
5 agencies and/or any other third parties who were paid a salary regardless of the hours
6 worked who held the job title Senior Quality Assurance Tester and/or Junior Quality
Assurance Tester and/or similar job titles and/or persons who were salaried non-
management employees in California during the **Relevant Time Period**.

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

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

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

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

15 **UCL Sub-Class:** All **Hourly Employee Class** members employed by Defendants in
16 California during the **Relevant Time Period**.

17 **Expense Reimbursement Sub-Class:** All persons employed by Defendants in
18 California who used their personal cell phones during the **Relevant Time Period**.

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

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

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

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
 - ii. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
 - iii. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
 - iv. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
 - v. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
 - vi. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;
 - vii. 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;
 - viii. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
 - ix. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;
 - x. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;
13. **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.
14. **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

1 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
2 and adequately represent and protect the interests of the other class members.

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

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

17 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
19 approximately May 2019 through October 15, 2020.

20 **Misclassification as Full-Time Exempt Employee**

21 18. Plaintiff is an individual who was misclassified as a full-time exempt employee to
22 provide services to Defendants. Plaintiff was hired to do quality assurance testing for interactive
23 mobile games developed by Defendants.

24 19. As a Sr. Live Ops QA Tester, Plaintiff's duties included but were not limited to live
25 game testing, promotion of Defendants' products, documenting best practices, and collaborating
26 with production associates to update games. Plaintiff was responsible for developing effective test
27 plans and performing standard testing to verify proper function and usability of Defendants' mobile
28 games.

20. Although Defendants internally classified Plaintiff and the putative class as “full-time exempt employees,” Plaintiff and the putative class were actually performing non-exempt work for the majority of their workday. Plaintiff and the putative class regularly worked more than eight hours each workday, and always worked more than forty hours each workweek. Plaintiff and the putative class worked six days a week and were given a volume of work that they necessarily ate lunch at their desk to continue working. A large portion of Plaintiff’s work was providing support and troubleshooting for Defendants’ employees to repair system failures.

21. Plaintiff and the putative class did not perform duties, more than fifty percent (50%) of the time, that would qualify him as exempt employees under the Professional, Executive or Administrative exemptions as outlined in Industrial Welfare Commission (“IWC”) Order Number 4-2001.

Executive Exemption

22. Plaintiff and the putative class did not customarily and regularly exercise discretion and independent judgment, as required to qualify as exempt under the Executive Exemption. Rather, he was given tasks to perform by Defendants. Plaintiff and the putative class did not have authority to hire or fire other employees and did not suggest or recommend who to hire or fire or who to advance and promote within the company. IWC Order No. 4-2001.

Administrative Exemption

23. Plaintiff and the putative class did not customarily and regularly exercise discretion and independent judgment as required by the administrative exemption. IWC Order No. 4-2001. Plaintiff and the putative class did not perform non-manual work directly related to management policies or general business operations of their employer. Plaintiff and the putative class did not regularly and directly assist a proprietor, or an employee employed in a bona fide executive or administrative capacity.

Professional Exemption

24. Plaintiff and the putative class were not licensed or certified by the State of California and were not primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting.

1 Henderson in fact requested help with certification related to technical skills and was denied by
2 Defendants. Plaintiff and the putative class's work did not require knowledge of an advanced type
3 in a field or science or learning customarily acquired by a prolonged course of specialized
4 intellectual instruction and study, as distinguished from a general academic education and from an
5 apprenticeship, and from training in the performance of routine mental, manual, or physical
6 processes, or work that is an essential part of or necessarily incident to any of the above work.
7 Plaintiff and the putative class did not engage in work that is original and creative in character in a
8 recognized field of artistic endeavor (as opposed to work which can be produced by a person
9 endowed with general manual or intellectual ability and training), and the result of which depended
10 primarily on the invention, imagination, or talent of the employee or work that is an essential part of
11 or necessarily incident to any of the above work.

12 25. Likewise, Plaintiff and the putative class were not employees in the computer
13 software field paid on an hourly basis amounting to more than \$41 dollars per hour. Henderson was
14 paid a fixed salary of 2,197.92. His pay stubs record exactly 86.67 hours for each pay period of 15
15 days regardless of the actual hours of work he did, but which was always more than the 86.67 hours
16 reported because Plaintiff worked Mondays through Saturdays and frequently stayed at work longer
17 than 8 hours to complete all his tasks. Computed at the standardized salary rate on his pay stubs,
18 Defendants were purporting to pay Plaintiff what amounts to \$25.36 per hour, but in reality the
19 actual amount was substantially less because they worked much more than 86.67 hours per pay
20 period.

21 26. Plaintiff and the putative class were misclassified as exempt employees when in
22 actuality they were non-exempt, hourly employees.

23 27. Accordingly, Plaintiff and the putative class were entitled to all the protections
24 afforded to them as non-exempt employees under California law.

25 28. As a result of being misclassified as exempt employees, the time worked by
26 Plaintiff and the putative class were not accurately recorded by the timekeeping system utilized by
27 Defendants and therefore resulted in the failure to pay Plaintiff and the putative class for all hours
28 actually worked and overtime compensation.

Off-the-clock Work

29. Plaintiff and the putative class were not paid all wages earned as Defendants directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-clock work.

30. Plaintiff and the putative class regularly started work before their scheduled work hours and continued to work after they were scheduled to stop and were not paid for this time. Plaintiff and the putative class were given such a large volume of work that it was not possible to complete all their required duties within the timeframe for which they were salaried and paid. As a result, Plaintiff and the putative class regularly performed work for which they were not compensated.

31. As a result of performing off-the-clock work that was directed, permitted, or otherwise encouraged by Defendants, Plaintiff and the putative class should have been paid for this time. Instead, Defendants only paid Plaintiff and the putative class based on the time they were clocked in for their shifts and did not pay Plaintiff and the putative class for any of the time spent working off-the-clock.

32. Defendants knew or should have known that Plaintiff and the putative class were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the putative class for these hours.

33. Defendants were aware of this practice and directed, permitted, or otherwise encouraged Plaintiff and the putative class to perform off-the-clock work.

34. As a result of Defendants' policies and practices, Plaintiff and the putative class were not paid for all hours worked.

Missed Meal Periods

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

1 formal written meal and rest period policy that encouraged employees to take their meal and rest
2 periods.

3 36. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
4 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
5 worked due to complying with Defendants' productivity requirements that required Plaintiff and
6 the putative class to work through their meal periods in order to complete their assignments on
7 time. Plaintiff was regularly provided catering and was instructed to take his meal back to his desk
8 so that he could continue working while he ate.

9 Missed Rest Periods

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

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

21 Expense Reimbursement

22 39. Plaintiff and the putative class members were required to utilize their own personal
23 cellphones to perform their job duties. Plaintiff and the putative class used their personal
24 cellphones nearly constantly to keep in close contact with the production and engineering
25 departments to update them on performance issues on their mobile games.

26 40. Plaintiff and the putative class members were not reimbursed for business expenses
27 incurred in using their personal cellphones

28 41. In addition, Plaintiff and the putative class members were not paid at least two times

1 the minimum wage for all hours worked.

2 42. Defendants failed to reimburse Plaintiff and the putative class for such necessary
3 business expenses incurred by them.

4 **Wage Statements**

5 43. Plaintiff and the putative class were not provided with accurate wage statements as
6 mandated by law pursuant to Labor Code § 226.

7 44. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages
8 earned” were not accurately reflected in that all hours worked, including overtime, were not
9 included.

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

13 46. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
14 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
15 included.

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

19 48. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive
20 dates of the period for which the employee is paid” were not included.

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

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28 ///

1 FIRST CAUSE OF ACTION

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 204, 223, 226.7, 512 and 1198)**

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

5 50. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
6 herein.

7 51. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
8 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
9 Code and the applicable Industrial Welfare Commission Wage Order ("Wage Order").

10 52. Labor Code § 512 and § 11 of the applicable Wage Order impose an affirmative
11 obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal
12 periods of at least thirty minutes for each work period of five hours, and to provide them with two
13 uninterrupted, duty-free meal periods of at least thirty minutes for each work period of ten hours.

14 53. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers
15 from requiring employees to work during required meal periods and require employers to pay non-
16 exempt employees an hour of premium wages on each workday that the employee is not provided
17 with the required meal period.

18 54. Compensation for missed meal periods constitutes wages within the meaning of
19 Labor Code § 200.

20 55. Labor Code § 1198 makes it unlawful to employ a person under conditions that
21 violate the applicable Wage Order.

22 56. Section 11 of the applicable Wage Order states:

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

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

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

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

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

16 61. Moreover, Defendants' written policies do not provide that employees must take
17 their first meal period before the end of the fifth hour of work, that employees are entitled to a
18 second meal period if they work a shift of over ten hours, or that the second meal period must
19 commence before the end of the tenth hour of work, unless waived.

20 62. 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 63. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
24 the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
25 costs of suit.

26 64. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
27 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal**
28

1 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS**

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

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

6 65. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

18 69. Compensation for missed rest periods constitutes wages within the meaning of Labor
19 Code § 200.

20 70. Labor Code § 1198 makes it unlawful to employ a person under conditions that
21 violate the Wage Order.

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

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

28 73. Specifically, Defendants written policies do not provide that employees may take a

1 rest period for each four hours worked, or major fraction thereof, nor that rest periods should be
2 taken in the middle of each work period insofar as practicable.

3 74. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of himself and
4 **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and
5 costs of suit.

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

9 **THIRD CAUSE OF ACTION**

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

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

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

13 76. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

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

26 81. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
27 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
28 underlying unpaid minimum wages and interest thereon.

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

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

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

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

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

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

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

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

27 90. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
28 **Employee Class** members for all time worked, including but not limited to, overtime hours at

1 statutory and/or agreed rates.

2 91. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
3 **Employee Class** members all earned wages every pay period at the correct rates, including
4 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
5 **Hourly Employee Class** members to perform off-the-clock work.

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

10 93. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
11 behalf of himself and **Hourly Employee Class** members, seeks to recover unpaid straight time and
12 overtime wages, interest thereon, and costs of suit.

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

16 **FOURTH CAUSE OF ACTION**

17 **FAILURE TO INDEMNIFY**

18 **(Lab. Code § 2802)**

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

20 95. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

21 96. Labor Code section 2802(a) states:

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

25 97. At all relevant times during the applicable limitations period, Plaintiff and the
26 **Expense Reimbursement Sub-Class** members incurred necessary business-related expenses and
27 costs, including but not limited to, frequent use of their personal cell phones.

28 98. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid

1 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the
2 discharge of their duties.

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

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

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

15 102. 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 Sub-Class** members for all necessary business expenses.

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

21 104. Plaintiff, on behalf of himself, and **Expense Reimbursement Sub-Class** members,
22 seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees
23 pursuant to Code of Civil Procedure § 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)**

28 105. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

1 106. Labor Code § 226(a) states:

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

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

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

25 109. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
26 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
27 that Defendants had the ability to provide them with accurate wage statements but had intentionally
28 provided them with written wage statements that Defendants knew do not comply with Labor Code

1 § 226(a).

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

10 111. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**
11 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
12 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
13 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
14 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class
15 member.

16 112. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
17 the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties Sub-**
18 **Class** members, seek awards of reasonable attorneys' fees and costs.

19 **SIXTH CAUSE OF ACTION**

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

21 **(Lab. Code §§ 201–203)**

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

23 113. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

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

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

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

12 120. Plaintiff is informed and believes that, at all relevant times during the applicable
13 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
14 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
15 §§ 201 or 202 by failing to timely pay them all final wages.

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

21 122. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of himself and
22 **Waiting Time Penalties Sub-Class** members, seeks waiting time penalties from the respective
23 dates that their final wages had first become due until paid, up to a maximum of thirty days, and
24 interest thereon.

25 123. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
26 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time**
27 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

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1 133. At all relevant times, Plaintiff and **UCL Sub-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.

4 134. 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 sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
7 and allow 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 behalf of himself and on
9 behalf of similarly situated persons in a class-action proceeding.

10 135. 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.

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

16 137. 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.

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

22 139. Accordingly, pursuant to Business & Professions Code §§ 17200 and 17203,
23 Plaintiff requests 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, an
26 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.

140. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself and **UCL Sub-Class** members, seeks 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.

141. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine, Plaintiff and **UCL Sub-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.*)

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

143. 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.

144. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself 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.

145. 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).

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

147. 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:

i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and

1 2802, one hundred dollars (\$100) for each employee per pay period for each
2 initial violation and two hundred dollars (\$200) for each employee per pay
3 period for each subsequent violation (penalties set by Labor Code §
4 2699(f)(2));

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

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

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

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

each violation (penalties set by Labor Code § 226.3);

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

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

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

PRAYER FOR RELIEF

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

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Civil penalties;

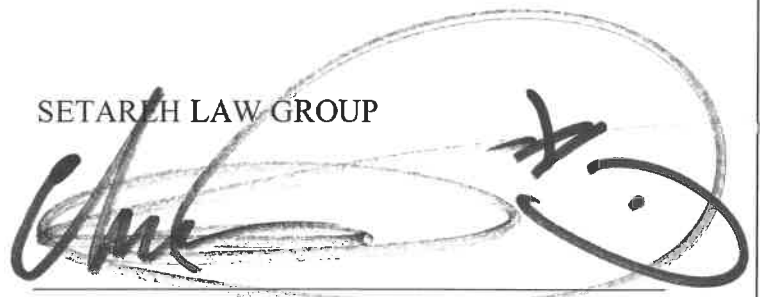
- 1 (11) Statutory penalties;
2 (12) Costs of suit;
3 (13) Reasonable attorneys' fees; and
4 (14) Such other relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

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

8
9
10 Dated: February 11, 2022

SETAREH LAW GROUP

A large, stylized handwritten signature in black ink, likely belonging to Shaun Setareh, is written over the printed name and extends to the right.

11
12
13 SHAUN SETAREH
14 THOMAS SEGAL
15 TYSON GIBB
16 Attorneys for Plaintiff
17 PELE HENDERSON
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1 **PROOF OF SERVICE**

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

5 On February 11, 2022, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

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

8 Jennifer S. Baldocchi
9 jenniferbaldocchi@paulhastings.com
10 Jarryd M. Cooper
11 jarrydcooper@paulhastings.com
12 PAUL HASTINGS LLP
13 515 South Flower Street
14 Twenty-Fifth Floor
15 Los Angeles, CA 90071
16 **Counsel for Defendant SCOPELY, INC.**

Zach Hutton
zachhutton@paulhastings.com
PAUL HASTINGS LLP
101 California Street
Forty-Eighth Floor
San Francisco, CA 94111
Counsel for Defendant SCOPELY, INC.

14 **[X] ONLY BY ELECTRONIC TRANSMISSION**

15 Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based
16 on notice provided on September 30, 2021 that, during the Coronavirus (COVID-19) pandemic,
17 this office will be working remotely, not able to send physical mail as usual, and is therefore
18 using only electronic mail. No electronic message or other indication that the transmission was
unsuccessful was received within a reasonable time after the transmission.

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

21 Executed on February 11, 2022, at Beverly Hills, California.

22 

23
24 Eric Sams