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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 JANICE GILMORE, on behalf of herself and
all others similarly situated,

14 *Plaintiff,*

15 v.

16 SAFE BOX LOGISTICS INC., a California
17 corporation; FEDERAL EXPRESS
18 CORPORATION, a Delaware corporation;
19 FEDEX GROUND PACKAGE SYSTEM,
20 INC., a Delaware corporation; FEDEX
CORPORATION, a Delaware corporation;
and DOES 1 through 50, inclusive,

21 *Defendants.*
22
23
24
25

Case No. 5:21-cv-06917-LHK

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Breaks (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 Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

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

4 **INTRODUCTION**

5 1. Plaintiff brings this class and representative action against Defendants SAFE BOX
 6 LOGISTICS INC., a California corporation (“Safe Box”); FEDEX GROUND PACKAGE
 7 SYSTEM, INC., a Delaware corporation (“FedEx”); and DOES 1 through 50, inclusive,
 8 (collectively “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff
 9 alleges that Defendants have:

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

25 Based on these alleged violations, Plaintiff now brings this class and representative action
 26 to recover unpaid wages, restitution, statutory and civil penalties, and related relief on behalf of
 27 herself and all others similarly situated, all other aggrieved employees, the general public, and the
 28 State of California.

JURISDICTION AND VENUE

2. This action was initially filed in the State of California, County of Santa Clara. Defendants subsequently removed this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), to The United States District Court For The Northern District of California on September 7, 2021.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1441 (a) because The United States District Court For The Northern District of California San Jose Division is the district and division embracing the place where the original action was pending.

PARTIES

4. Plaintiff is and was, 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 SAFE BOX LOGISTICS INC. is, and at all relevant times mentioned herein was, a California corporation doing business in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges, that Defendant FEDEX GROUND PACKAGE SYSTEM, INC. is, and at all relevant times mentioned herein was, a Delaware corporation doing business in the State of California.

7. 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.

8. 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

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

4 **CLASS ALLEGATIONS**

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

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

11 **Hourly Employee Class:** All persons who performed work for FedEx and/or Safe
 12 Box and/or any other FedEx contractor in their capacity as “Drivers” and/or in
 13 positions with similar job titles or duties in California during the **Relevant Time**
 14 **Period.**

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

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

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

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

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

Expense Reimbursement Sub-Class: All **Hourly Employee Class** members in
 California who used their personal cell phone for work and/or had a uniform and/or
 incurred business expenses including but not limited to being required to purchase
 hand sanitizer and/or gloves, and/or masks and/or cleaning wipes during the **Relevant**
Time Period.

Vacation Pay Sub-Class: All **Hourly Employee Class** members who earned paid
 vacation days, without receiving compensation for each vested paid vacation day
 during the **Relevant Time Period.**

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

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

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

- 11 i. Whether Defendants maintained a policy or practice of failing to provide employees
 12 with their meal periods;
- 13 ii. Whether Defendants maintained a policy or practice of failing to provide employees
 14 with their rest breaks;
- 15 iii. Whether Defendants failed to pay premium wages to class members when they have
 16 not been provided with required meal and/or rest breaks;
- 17 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
 18 as a result of policies that fail to provide meal periods in accordance with California
 19 law;
- 20 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
 21 for all time worked;
- 22 vi. Whether Defendants used payroll formulas that systematically fail to account for
 23 non-discretionary bonuses and/or other applicable remuneration when calculating
 24 regular rates of pay for class members;
- 25 vii. Whether Defendants failed to pay overtime wages to class members as a result of
 26 incorrectly calculating their regular rates of pay;
- 27 viii. Whether Defendants failed to pay premium wages to class members based on their
 28 respective “regular rates of compensation” by not including commissions and/or

- 1 other applicable remuneration in calculating the rates at which those wages are paid;
- 2 ix. Whether Defendants failed to provide proportionate accruals for vested vacation time
- 3 for class members as required by California law;
- 4 x. Whether Defendants subjected the vacation time and/or floating holidays they offer
- 5 to class members to forfeiture;
- 6 xi. Whether Defendants failed to reimburse class members for all necessary business
- 7 expenses incurred during the discharge of their duties;
- 8 xii. Whether Defendants failed to provide class members with accurate written wage
- 9 statements as a result of providing them with written wage statements with
- 10 inaccurate entries for, among other things, amounts of gross and net wages, and total
- 11 hours worked;
- 12 xiii. Whether Defendants applied policies or practices that result in late and/or incomplete
- 13 final wage payments;
- 14 xiv. Whether Defendants are liable to class members for waiting time penalties under
- 15 Labor Code section 203;
- 16 xv. Whether class members are entitled to restitution of money or property that
- 17 Defendants may have acquired from them through unfair competition;
- 18 14. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
- 19 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
- 20 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.
- 21 15. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
- 22 that she has no interests that are adverse to or otherwise conflict with the interests of absent class
- 23 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
- 24 and adequately represent and protect the interests of the other class members.
- 25 16. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
- 26 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
- 27 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
- 28 behalf of Plaintiff and absent class members.

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

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

12 18. Plaintiff worked for Defendants as an hourly, non-exempt employee from
 13 approximately October 2019 through August 4, 2020.

14 **Joint Employment**

15 19. FedEx contracts with approximately 5,000 different companies which handle FedEx
 16 Ground deliveries across the United States and also in California. Safe Box is one of these many
 17 contractors. FedEx jointly employed Plaintiff and some members of the putative class with Safe
 18 Box. FedEx similarly jointly employs drivers with the thousands of other contractors through an
 19 interconnected business structure. Plaintiff and the putative class applied for a position as a "FedEx
 20 driver."

21 20. Furthermore, Defendants had Plaintiff and the putative class consent to authorizing a
 22 background check prior to employment which was to be procured by the company First Advantage.
 23 The caption page of that consent form notes that the background check is being procured by First
 24 Advantage on behalf of the employer FEDEX GROUND PACKAGE SYSTEM INC. and lists the
 25 address as 1000 Fed Ex Drive, Moon Township Pennsylvania.

26 21. During their employment Plaintiff and the putative class wore uniforms with the
 27 "FedEx" logo on them, as did Plaintiff's managers and supervisors Terry, Will, Jeff, and Angel
 28 [surnames unknown]. Plaintiff and the putative class's schedule and working hours were set by

1 FedEx. The routes that Plaintiff and the putative class took delivering packages were controlled and
2 created by FedEx.

3 22. Plaintiff worked primarily out of a warehouse in Roseville, California. The
4 warehouse had signage indicating that it was a FedEx Warehouse. The truck that Plaintiff and the
5 putative class drove was marked as a FedEx truck. A large FedEx logo appeared on the truck.

6 23. Plaintiff and the putative class were provided with a scanner to collect information
7 about packages and transmit that information to FedEx. Plaintiff and the putative class were
8 provided with a tablet that was preloaded with an application to provide route directions and
9 destinations. The application was a FedEx application. Plaintiff and the putative class signed in
10 through the FedEx application to begin scanning packages and signed out of the FedEx application
11 at the end of their workdays. Plaintiff and the putative class were instructed by their Managers and
12 Supervisors how to enter log in credentials which were supplied by FedEx.

13 24. FedEx maintained control over which packages and the amount of packages Plaintiff
14 and the putative class were required to deliver on their shifts. Plaintiff is informed and believes, and
15 thereupon alleges, that Safe Box contracts only with FedEx and no other entities.

16 25. Additionally, Plaintiff and the putative class submitted timesheets regarding the
17 hours they worked. On information and belief, Plaintiff alleges that when Plaintiff and the putative
18 class did not write out their own timesheets, their managers and supervisors filled out their
19 timesheets for them by getting the clock-in data from mygroundbiz.com, a portal used by FedEx to
20 collaborate with contractors like Safe Box. On timesheets that were not signed by Plaintiff,
21 Plaintiff's manager filled out the timesheet and wrote "OffMyGroundBiz" where the employee
22 signature usually went on similar timesheets that were signed by Plaintiff herself. On information
23 and belief, Plaintiff alleges that MyGroundBiz is an online portal at mygroundbiz.com that requires
24 a FedEx ID number to sign into.

25 26. Plaintiff and members of the putative class were jointly employed by FedEx and
26 thousands of other contractors, including but not limited to Safe Box, through an interconnected
27 business structure.

28 ///

Security Check and Off-the-Clock

27. Plaintiff and the putative class were required by Defendants to go through a security check at the time of entering and leaving the premises in which they worked. The security check required Plaintiff and the putative class to first wait in a general-purpose line where anyone who wanted to enter the venue was required to go through a security screening. All delivery drivers would have to go through the security checks so it would take between five (5) and fifteen (15) minutes on average to complete.

28. Plaintiff and the putative class were required to spend at least five (5) to fifteen (15) minutes each time they went through the security check—time that was not paid by Defendants.

29. Plaintiff and the putative class were required to go through the security check prior to clocking in at the beginning of each work shift and were required to clock out first at the end of each work shift prior to going through the security check.

30. Based on the above, Defendants' security check practices have resulted in substantial amounts of time not recorded as hours worked therefore resulting in substantial amounts of wages not paid to Plaintiff and the putative class, between ten (10) to thirty (30) minutes each day of work.

31. Additionally, Plaintiff and the putative class were required to secure their truck and get routes before clocking in. Plaintiff and the putative class were required to perform a comprehensive inspection of both the outside of their vehicle as well as all the packages inside before clocking in. Conducting this inspection at the beginning of the day could take a long time, and Plaintiff could spend up to an hour after her arrival performing work duties before she could clock in.

32. Plaintiff and the putative class were likewise required to inspect their vehicles after clocking out each evening. This was further time spent working that was not compensated to Plaintiff and the putative class.

33. As more specifically delineated herein below, Defendants automatically deducted a half hours' pay whether or not a meal break was taken on each day. Plaintiff and the putative class had this time automatically deducted despite not taking their full meal breaks or any meal break at

1 all.

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

7 35. Defendants knew or should have known that Plaintiff and the putative class were
8 performing work before and after their scheduled work shifts and failed to pay Plaintiff and the
9 putative class for these hours. Defendants' awareness is demonstrated by the fact that they require
10 these pre-trip and post-trip inspections and security checks while only paying for time that the
11 drivers are signed into the FedEx application.

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

14 **Missed Meal Periods**

15 37. During their employment with Defendants, Plaintiff and the putative class regularly
16 worked shifts of eight to twelve hours per day without being afforded a meal break during the first
17 five hours, and/or a second meal break after ten hours, as required by California law. Defendants
18 had a policy of automatically deducting one half hour from Plaintiff's and the putative class's
19 paychecks, regardless of whether Plaintiff and the putative class received a meal period.

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

27 39. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
28 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours

1 worked due to complying with Defendants' productivity requirements that required Plaintiff and
2 the putative class to work through their meal periods in order to complete their assignments on
3 time.

4 40. Plaintiff and the putative class were required to text their managing supervisor when
5 they were taking lunch. Management would then unilaterally deduct one half hour from their
6 clocked-in hours to reflect a meal period. However, Plaintiff's manager Angel [surname unknown]
7 would almost always call to interrupt plaintiff's meal period with pressing work tasks and/or to
8 give instructions. Plaintiff and the putative class were instructed not to leave their truck and were
9 required to stay at their workstation and otherwise not exercise their right to be relieved of work
10 obligations while they took their meal period. Especially during the coronavirus pandemic,
11 delivery drivers were given extremely high volumes of packages to deliver to Americans largely
12 confined indoors. Defendants' management frequently gave Plaintiff and the putative class more
13 destinations and work during their meal periods with the expectation that they drop what they are
14 doing and immediately attend to their work duties despite Defendants auto deducting one half
15 hour.

16 41. At least twice a week, Plaintiff was given such a large amount of work that she
17 knew she would fall too far behind if she took a lunch period, so she was unable to if she had any
18 hope of staying on schedule.

19 42. Additionally, Defendants were able to view in real time the locations of each of the
20 drivers on their routes and could see that they were not stopping to take breaks during their shifts.

21 **Missed Rest Breaks**

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

44. On many occasions, plaintiff and the putative class were only provided with one rest break despite frequently being scheduled for and working at least eight (8) hours in a shift. Plaintiff and the putative class never had their rest breaks recorded or scheduled, they were instructed to text their manager when they were on a rest break; however, they were almost never afforded time to rest and were frequently interrupted even if they did text their manager and ask to take a rest break.

45. For example, on August 4, 2020, during her final pay period, Plaintiff worked a shift of at least 10.35 hours, yet was unable to take three rest breaks due to the amount of packages she needed to deliver and did not notify her supervisor of three rest breaks on that day. Plaintiff's supervisors would have seen that she could not take these breaks because they could track her vehicle in real time and provided her with so many packages that she otherwise would not have completed her route in that time.

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

Vacation Pay

47. Plaintiff and the putative class accrued vacation wages during their employment with Defendants, which was reflected on their paystubs.

48. Vacation wages are considered a form of wages under Labor Code § 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

49. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

50. Plaintiff and the putative class are entitled to vacation accrued during their employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all

1 accrued vacation pay. Specifically, Plaintiff's final pay stub noted 32 hours of accrued vacation
2 with a remaining balance of 32 hours, yet she did not receive any payment for those 32 hours.

3 **Expense Reimbursement**

4 51. Plaintiff and the putative class members were required by Defendants to utilize their
5 own personal cell phones to perform their job duties.

6 52. Plaintiff and the putative class members were not reimbursed for business expenses
7 incurred in frequently using their cell phones to navigate when the tablet they were provided did not
8 function, to contact management and communicate pertinent information regarding their work
9 obligations, including requesting their meal and rest breaks. Furthermore, Plaintiff and the putative
10 class members were required to mark packages and purchase their own markers because they were
11 not provided by Defendants. During the heightened health safety precautions adopted during the
12 coronavirus pandemic, Defendants lacked protective supplies such as hand sanitizer, cleaning
13 wipes, masks, and gloves. Plaintiff and the putative class supplied their own cleaning and
14 precautionary sanitary equipment in order to safely do their job and were not reimbursed by
15 defendants.

16 53. Plaintiff and the putative class were provided with a work uniform which they were
17 instructed to wear. Plaintiff and the putative class were forced to maintain their uniform themselves
18 and would regularly wash their uniform to keep it presentable for the employer's benefit. Plaintiff's
19 uniform was too large because she was provided with a male uniform that would constantly fall off
20 during her work shift. Plaintiff purchased her own uniform and was not reimbursed for the cost.
21 Plaintiff informed her managers that she had needed to purchase her own uniform since the male
22 uniform did not fit.

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

25 55. Defendants failed to reimburse Plaintiff and the putative class for such necessary
26 business expenses incurred by them.

27 **Wage Statements**

28 56. Plaintiff and the putative class were not provided with accurate wage statements as

1 mandated by law pursuant to Labor Code § 226.

2 57. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
3 earned” were not accurately reflected in that all hours worked, including the aforementioned
4 overtime and “off-the-clock” work, were not included.

5 58. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
6 worked by the employee” were not accurately reflected in that all hours worked, including overtime
7 and “off-the-clock” work, were not included.

8 59. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
9 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
10 clock” work, were not included.

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

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

19 61. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
20 herein.

21 62. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been
22 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
23 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

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

28 64. Labor Code § 226.7 and § 11 of the applicable Wage Order both prohibit employers

1 from requiring employees to work during required meal periods and require employers to pay non-
 2 exempt employees an hour of premium wages on each workday that the employee is not provided
 3 with the required meal period.

4 65. Compensation for missed meal periods constitutes wages within the meaning of
 5 Labor Code § 200.

6 66. Labor Code § 1198 makes it unlawful to employ a person under conditions that
 7 violate the applicable Wage Order.

8 67. Section 11 of the applicable Wage Order states:

9 “No employer shall employ any person for a work period of more than five (5)
 10 hours without a meal period of not less than 30 minutes, except that when a
 11 work period of not more than six (6) hours will complete the day’s work the
 12 meal period may be waived by mutual consent of the employer and employee.
 13 Unless the employee is relieved of all duty during a 30 minute meal period, the
 14 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.”

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

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

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

25 71. Plaintiff alleges that, at all relevant times during the applicable limitations period,
 26 Defendants maintained a policy or practice of automatically deducting one half hour for a meal
 27 period from the paychecks of **Meal Period Sub-Class** members on each day they worked,
 28 regardless of whether or not they were able to take an uninterrupted, duty-free meal period.

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

73. Plaintiff was never able to take a second meal period or informed of her right to do so on any occasion that she worked a shift over ten hours, which happened on average at least once per week beginning in April of 2020.

74. 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.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

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

(Plaintiff and Rest Break Sub-Class)

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

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

79. Section 12 of the applicable Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest breaks 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.

80. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers from requiring employees to work during required rest breaks 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 break(s).

81. Compensation for missed rest breaks constitutes wages within the meaning of Labor Code § 200.

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

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

84. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Break Sub-Class** members additional premium wages when required rest breaks were not provided.

85. Specifically, Defendants written policies do not provide that employees may take a rest break for each four hours worked, or major fraction thereof, nor that rest breaks should be taken in the middle of each work period insofar as practicable.

86. Pursuant to Labor Code §§ 204, 218.6 and 226.7, Plaintiff, on behalf of herself and **Rest Break Sub-Class** members, seeks to recover unpaid premium wages, interest thereon, and costs of suit.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY HOURLY AND OVERTIME WAGES

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

(Plaintiff and Hourly Employee Class)

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

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

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

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

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

13 93. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
14 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
15 underlying unpaid minimum wages and interest thereon.

16 94. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
17 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
18 period.

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

22 96. Labor Code § 1198 makes it unlawful for employers to employ employees under
23 conditions that violate the applicable Wage Order.

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

28 98. Labor Code § 223 makes it unlawful for employers to pay their employees lower

1 wages than required by contract or statute while purporting to pay them legal wages.

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

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

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

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

17 103. At all relevant times during the applicable limitations period, Defendants maintained
18 a policy or practice of automatically deducting one half hour from Plaintiff's timecard on every
19 workday for a meal period, regardless of whether or not Plaintiff was provided with a meal period.

20 104. Plaintiff is informed and believes that, at all relevant times during the applicable
21 limitations period, Defendants maintained a policy or practice of automatically deducting one half
22 hour from **Hourly Employee Class** members' timecard on every workday for a meal period,
23 regardless of whether **Hourly Employee Class** members were provided with a meal period.

24 105. As a result of Defendants' policy or practice of automatically deducting one half
25 hour from employees' timecards for every workday for a meal period, Plaintiff and **Hourly**
26 **Employee Class** members were required to perform off-the-clock work that Defendants either
27 knew or should have known they were working.

28 106. At all relevant times during the applicable limitations period, Defendants maintained

1 a policy or practice of requiring Plaintiff to undergo a security check and perform a vehicle
2 inspection before clocking in and after clocking out for each shift.

3 107. Plaintiff is informed and believes that, at all relevant times during the applicable
4 limitations period, Defendants maintained a policy or practice of requiring **Hourly Employee Class**
5 members to undergo a security check and perform a vehicle inspection before clocking in and after
6 clocking out for each shift.

7 108. As a result of Defendants' policy or practice of requiring security checks and vehicle
8 inspections before clocking in and after clocking out, Plaintiff and **Hourly Employee Class**
9 members were required to perform off-the-clock work that Defendants either knew or should have
10 known they were working.

11 109. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time
12 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or
13 permitting her to work during unpaid meal periods and/or failing to properly pay Plaintiff for all
14 overtime hours worked.

15 110. Plaintiff is informed and believes that, at all relevant times during the applicable
16 limitations period, Defendants maintained a policy or practice of not paying hourly wages to
17 **Hourly Employee Class** members for all time worked, including but not limited to, overtime hours
18 at statutory and/or agreed rates by suffering or permitting them to work during unpaid meal periods.

19 111. Section 9 of the applicable Wage Order states:

20 "When uniforms are required by the employer to be worn by the employee as
21 a condition of employment, such uniforms shall be provided and maintained
22 by the employer. The term 'uniform' includes wearing apparel and
accessories of distinctive design or color."

23 112. If the employer does not choose to maintain employees' uniforms itself where it is
24 required to do so, the Division of Labor Standards Enforcement ("DLSE") takes the position that
25 the employer may pay each affected employee a weekly maintenance allowance of an hour's pay at
26 the state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic
27 estimate of the time involved in maintaining the uniform.

28 113. At all relevant times during the applicable limitations period, and in violation of the

1 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
 2 compensate Plaintiff with minimum and/or overtime wages for all hours she worked as a result of
 3 its failure to maintain employee uniforms or pay her a weekly maintenance allowance.

4 114. Plaintiff is informed and believes that, at all relevant times and in violation of the
 5 above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to
 6 compensate **Hourly Employee Class** members with minimum and/or overtime wages for all hours
 7 they worked as a result of its failures to maintain employee uniforms or pay them a weekly
 8 maintenance allowance.

9 115. 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.

13 116. 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.

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

20 118. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
 21 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and **Hourly**
 22 **Employee Class** members, seeks to recover reasonable attorneys' fees.

23 **FOURTH CAUSE OF ACTION**

24 **FAILURE TO PAY VACATION WAGES**

25 **(Lab. Code § 227.3)**

26 **(Plaintiff and Vacation Pay Sub-Class)**

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

28 120. California Labor Code section 227.3 provides:

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

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

122. As a result of Defendants' reimbursement policies and practices, Plaintiff is informed and believes and thereon alleges that Defendants failed to reimburse her and **Vacation Pay Sub-Class** members for all accrued vacation wages.

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

124. Plaintiff, on behalf of herself and the members of the **Vacation Pay Sub-Class**, seeks interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Expense Reimbursement Sub-Class)

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

126. Labor Code section 2802(a) states:

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

127. At all relevant times during the applicable limitations period, Plaintiff and the **Expense Reimbursement Sub-Class** members incurred necessary business-related expenses and

costs, including but not limited to, frequent use of their personal cell phones to contact management and the costs of maintaining their uniform in presentable condition.

128. Plaintiff is informed and believes and thereupon alleges that Defendants failed to indemnify Plaintiff for all necessary expenses incurred in the discharge of their duties.

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

130. Pursuant to Labor Code § 452, an employer is authorized to prescribe the weight, color, quality, texture, style, form, and make of uniforms required to be worn by their employees.

131. Section 9 of the applicable Wage Order states:

When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.

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

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

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

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

136. Plaintiff, on behalf of herself , and **Expense Reimbursement Sub-Class** members, seeks interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to Code of Civil Procedure § 1021.5.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiff and Wage Statement Penalties Sub-Class)

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

138. Labor Code § 226(a) states:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as 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.

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

1 Letter July 6, 2006.)

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

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

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

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

23 144. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
24 the common fund doctrine, Plaintiff, on behalf of herself and **Wage Statement Penalties Sub-**
25 **Class** members, seek awards of reasonable attorneys' fees and costs.

26 ///

27 ///

28 ///

SEVENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Lab. Code §§ 201–203)

(Plaintiff and Waiting Time Penalties Sub-Class)

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

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

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

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

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

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

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

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

153. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201

1 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
2 requirements.

3 154. Pursuant to Labor Code §§ 203 and 218.6, Plaintiff, on behalf of herself and **Waiting**
4 **Time Penalties Sub-Class** members, seeks waiting time penalties from the respective dates that
5 their final wages had first become due until paid, up to a maximum of thirty days, and interest
6 thereon.

7 155. Pursuant to Labor Code § 226, Code of Civil Procedure § 1021.5, the substantial
8 benefit doctrine and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time**
9 **Penalties Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

10 **EIGHTH CAUSE OF ACTION**

11 **UNFAIR COMPETITION**

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

13 **(Plaintiff and UCL Sub-Class)**

14 156. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

15 157. Business and Professions Code § 17200 defines “unfair competition” to include any
16 unlawful business practice.

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

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

24 160. Plaintiff, on behalf of herself and the **UCL Sub-Class** members, re-alleges and
25 incorporates the FIRST, SECOND, THIRD, FOURTH, and FIFTH causes of action herein.

26 161. Plaintiff lost money and/or property as a result of the aforementioned unfair
27 competition.

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

1 163. Plaintiff is informed and believes and thereupon alleges that, by committing the
2 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
3 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
4 violating the Labor Code as alleged herein.

5 164. Defendants have committed criminal conduct through their policies and practices of,
6 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
7 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
8 work period of five or more hours, by subjecting their vacation pay to forfeiture, by failing to pay
9 non-exempt employees for all hours worked, and by failing to reimburse them for all expenses.

10 165. At all relevant times, Plaintiff and **UCL Sub-Class** members have been non-exempt
11 employees and entitled to the full protections of both the Labor Code and the applicable Wage
12 Order.

13 166. Defendants' unlawful conduct as alleged in this Complaint amounts to and
14 constitutes unfair competition within the meaning of Business and Professions Code section 17200
15 *et sequitur*. Business and Professions Code §§ 17200 *et sequitur* protect against unfair competition
16 and allow a person who has suffered an injury-in-fact and has lost money or property as a result of
17 an unfair, unlawful, or fraudulent business practice to seek restitution on behalf of herself and on
18 behalf of similarly situated persons in a class-action proceeding.

19 167. As a result of Defendants' violations of the Labor Code during the applicable
20 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
21 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
22 conduct.

23 168. Plaintiff is informed and believes that other similarly situated persons have been
24 subject to the same unlawful policies or practices of Defendants.

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

28 170. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive

1 relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act
2 that violates, or is considered unlawful under, any other state or federal law.

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

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

14 173. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
15 the common fund doctrine, Plaintiff and **UCL Sub-Class** members are entitled to recover
16 reasonable attorneys’ fees in connection with their unfair competition claims.

17 **NINTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab. Code §§ 2698 *et seq.*)**

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

21 175. During the applicable limitations period, Defendants have violated Labor Code §§
22 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

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

27 177. Plaintiff, a former employee against whom Defendants committed one or more of the
28 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee

1 within the meaning of Labor Code § 2699(c).

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

6 179. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
7 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
8 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- 9 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
10 and 2802, one hundred dollars (\$100) for each employee per pay period for
11 each initial violation and two hundred dollars (\$200) for each employee per
12 pay period for each subsequent violation (penalties set by Labor Code §
13 2699(f)(2));
- 14 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
15 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 16 iii. For violations of Labor Code § 204, 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 25% of the amount
19 unlawfully withheld from each employee, for each initial violation that was
20 either willful or intentional, and two hundred dollars (\$200) for each
21 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
22 from each employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code § 210);
- 25 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
26 employee for each initial violation that was neither willful nor intentional,
27 two hundred dollars (\$200) for each employee, plus twenty-five percent
28 (25%) of the amount unlawfully withheld from each employee, for each

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, all other aggrieved employees, the general public, and the State of California 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;
- (11) Statutory penalties;
- (12) Costs of suit;
- (13) Reasonable attorneys' fees; and
- (14) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, hereby demands a jury trial on all issues so triable.

Dated: November 11, 2021

SETAREH LAW GROUP



SHAUN SETAREH
WILLIAM M. PAO
NOLAN DILTS
Attorneys for Plaintiff
JANICE GILMORE