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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION
12

CGC-21-596940

13 MARVIN TOLEDO, on behalf of himself and
14 all others similarly situated, and the general
public,

15 *Plaintiff,*

16 v.

17 DELTA AIR LINES, INC., a Delaware
18 corporation; and DOES 1 through 50,
inclusive,

19 *Defendants.*
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Case No.

CLASS AND REPRESENTATIVE ACTION

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 MARVIN TOLEDO ("Plaintiff"), on behalf of himself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants DELTA AIR
5 LINES, INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to
6 as "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 overtime wages at the correct rate;
- 15 (6) failed to pay them double time wages at the correct rate;
- 16 (7) failed to pay them overtime and/or double time wages by failing to include all
17 applicable remuneration in calculating the regular rate of pay;
- 18 (8) failed to pay them at least minimum wage for all hours worked;
- 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 and representative action to
23 recover unpaid wages, restitution, civil and statutory penalties, and related relief on behalf of
24 himself and all others similarly situated, all other aggrieved employees, and the State of California.

25 **JURISDICTION AND VENUE**

26 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
27 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
28 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

3. Venue is proper in the County of San Francisco 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 DELTA AIR LINES, 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 in hourly or non-exempt positions in California
during the **Relevant Time Period**.

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

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

10 **Wage Statement Penalties Sub-Class**: All **Hourly Employee Class**
11 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.

12 **Waiting Time Penalties Sub-Class**: All **Hourly Employee Class** members
13 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.

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

16 **Regular Rate Class**: All of Defendants' hourly, non-exempt employees who were not
17 paid overtime wages for all overtime hours worked and/or premiums for meal and/or
rest break violations as a result of not correctly calculating their regular rate of pay to
18 include all applicable remuneration, including, but not limited to, commissions,
afternoon shift premiums, night premiums, temporary duty override, shared rewards,
incentive-All About Cust, award, pay card value, premium override, non-
19 discretionary bonuses and/or other applicable remuneration.

20 **Expense Reimbursement Class**: All persons employed by Defendants in California
21 who were not reimbursed for required steel toed boots and/or gloves during the
Relevant Time Period.

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

25 11. **Numerosity**: The class members are so numerous that the individual joinder of each
26 individual class member is impractical. While Plaintiff does not currently know the exact number of
27 class members, Plaintiff is informed and believes, and thereupon alleges, that the actual number
28

1 exceeds the minimum required for numerosity under California law.

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

- 5 i. Whether Defendants maintained a policy or practice of failing to provide employees
6 with their meal periods;
- 7 ii. Whether Defendants maintained a policy or practice of failing to provide employees
8 with their rest periods;
- 9 iii. Whether Defendants failed to pay premium wages to class members when they have
10 not been provided with required meal and/or rest periods;
- 11 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
12 as a result of policies that fail to provide meal periods in accordance with California
13 law;
- 14 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
15 for all time worked;
- 16 vi. Whether Defendants used payroll formulas that systematically fail to account for
17 non-discretionary bonuses and/or other applicable remuneration when calculating
18 regular rates of pay for class members;
- 19 vii. Whether Defendants failed to pay overtime wages to class members as a result of
20 incorrectly calculating their regular rates of pay;
- 21 viii. Whether Defendants failed to pay premium wages to class members based on their
22 respective “regular rates of compensation” by not including commissions and/or
23 other applicable remuneration in calculating the rates at which those wages are paid;
- 24 ix. Whether Defendants failed to reimburse class members for all necessary business
25 expenses incurred during the discharge of their duties;
- 26 x. Whether Defendants failed to provide class members with accurate written wage
27 statements as a result of providing them with written wage statements with
28 inaccurate entries for, among other things, amounts of gross and net wages, and total

1 hours worked;

2 xi. Whether Defendants applied policies or practices that result in late and/or incomplete
3 final wage payments;

4 xii. Whether Defendants are liable to class members for waiting time penalties under
5 Labor Code section 203;

6 xiii. Whether class members are entitled to restitution of money or property that
7 Defendants may have acquired from them through unfair competition;

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

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

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

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

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

2 17. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
3 applicable statutory period.

4 **Security Check and Off-the-Clock**

5 18. Plaintiff and the putative class were required to utilize the general entrance to the
6 venues and required to go through a security check at the time of entering and leaving the premises
7 on which they worked. The security check required Plaintiff and the putative class to first wait in a
8 general purpose line where anyone who wanted to enter the venues were required to go through a
9 security screening.

10 19. Plaintiff and the putative class were required to stand through long lines to be fully
11 inspected and cleared to enter the premises. Getting through security took on average 35 minutes,
12 but at times could be longer. All of this time was considered Plaintiff and the putative class' own
13 personal time for which they were not compensated, although the security checks were done for the
14 benefit of Defendants and as an everyday work requirement. Defendants exert control over the
15 extent to which employees were subject to security checks as exemplified by their SkyPriority
16 Access program which offers expedited security lines.

17 20. Plaintiff and the putative class were required to spend at least five to fifteen minutes
18 each time they went through the security check—time that was not paid by Defendants.

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

22 22. Additionally, after getting through long security lines, Plaintiff and the putative
23 class would walk to their designated wall machine for clocking in and/or clocking out, and there
24 would be another line of employees which would take approximately five minutes to get through
25 so that they could punch in and start their recorded hours for pay.

26 23. Finally, Plaintiff and the putative class were constantly having to stay late and work
27 “off-the-clock.” Because people would leave but there would still be pressing work requirements,
28 Plaintiff and the putative class were required to stay after their shift had ended and pick up other

1 employees' duties so that Defendant could maintain their schedule.

2 24. Based on the above, Defendants' security check practices and timeclock procedures
3 have resulted in substantial amounts of time not recorded as hours worked therefore resulting in
4 substantial amounts of wages not paid to Plaintiff and the putative class.

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

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

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

12 **Missed, Shortened, and/or Interrupted Meal Periods and Policy of Deducting 30 Minutes**

13 28. During their employment with Defendants, Plaintiff and the putative class regularly
14 worked shifts of eight to twelve hours per day, without being afforded a meal break during the first
15 five hours, and/or a second meal break after ten hours, as required by California law. Defendants
16 had a policy of deducting thirty minutes from Plaintiff's and the putative class' paychecks,
17 regardless of whether Plaintiff and the putative class received a meal period or not.

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

25 30. Plaintiff and the putative class were directed by their managers and supervisors to
26 clock out for meal periods even though they continued to perform work with the full knowledge of
27 their supervisors. Plaintiff and the putative class would be forced to clock out for lunch even
28 though they did not actually go to lunch and continued working. Additionally, there were three
security checks required when entering or leaving the work premises which would take

1 approximately 35 minutes to get through, so it was impossible to leave the premises. Plaintiff and
2 the putative class clocked out with a wall machine, and there was a line of employees looking to
3 clock in and out at the same time. Therefore, their meal periods were regularly shortened because
4 they were required to be timely clocked in to report to their stations. Additionally, if a flight
5 arrived early or other work popped up suddenly, Plaintiff and the putative class were required by
6 their managers and supervisors to attend to pressing tasks regardless of whether they were
7 supposedly taking a meal period or not.

8 31. As a result of Defendants' policy, Plaintiffs and the putative class were regularly not
9 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
10 worked due to complying with Defendants' productivity requirements that required Plaintiff and
11 the putative class to work through their meal periods in order to complete their assignments on
12 time.

12 **Missed Rest Periods**

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

20 33. Plaintiff and the putative class were required to stay on the premises at all times. No
21 set time was scheduled for rest breaks, and a majority of their shifts. Plaintiff and the putative class
22 were unable to take any rest breaks as they were required to continuously work through the
23 duration of their shifts.

24 34. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
25 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
26 due to complying with Defendants' productivity requirements that required Plaintiff and the
27 putative class to work through their rest periods in order to complete their assignments on time.
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43. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

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

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiff and Meal Period Sub-Class)

45. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged herein.

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

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

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

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

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

1 51. Section 11 of the applicable Wage Order states:

2 “No employer shall employ any person for a work period of more than five (5)
3 hours without a meal period of not less than 30 minutes, except that when a
4 work period of not more than six (6) hours will complete the day’s work the
5 meal period may be waived by mutual consent of the employer and employee.
6 Unless the employee is relieved of all duty during a 30 minute meal period, the
7 meal period shall be considered an ‘on duty’ meal period and counted as time
8 worked. An ‘on duty’ meal period shall be permitted only when the nature of
9 the work prevents an employee from being relieved of all duty and when by
10 written agreement between the parties an on-the-job paid meal period is agreed
11 to. The written agreement shall state that the employee may, in writing, revoke
12 the agreement at any time.”

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

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

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

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

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

32 57. Moreover, Defendants’ written policies do not provide that employees must take
33 their first meal period before the end of the fifth hour of work, that employees are entitled to a

1 second meal period if they work a shift of over ten hours, or that the second meal period must
2 commence before the end of the tenth hour of work, unless waived.

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

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

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

12 SECOND CAUSE OF ACTION

13 **FAILURE TO PROVIDE REST PERIODS**

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

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

16 61. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

28 65. Compensation for missed rest periods constitutes wages within the meaning of Labor

1 Code § 200.

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

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

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

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

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

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

19 **THIRD CAUSE OF ACTION**

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

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

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

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

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

27 74. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
28 which an employee is subject to the control of the employer, and includes all the time the employee

1 is suffered or permitted to work, whether or not required to do so.”

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

5 76. Labor Code § 1194 invalidates any agreement between an employer and an
6 employee to work for less than the minimum or overtime wage required under the applicable Wage
7 Order.

8 77. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
9 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
10 underlying unpaid minimum wages and interest thereon.

11 78. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
12 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
13 period.

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

17 80. Labor Code § 1198 makes it unlawful for employers to employ employees under
18 conditions that violate the applicable Wage Order.

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

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

25 83. Labor Code § 510 and § 3 of the applicable Wage Order require employers to pay
26 non-exempt employees overtime wages of no less than one and one-half times the employees’
27 respective regular rates of pay for all hours worked in excess of eight hours in one workday, all
28 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the

1 seventh consecutive day of one workweek.

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

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

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

12 87. At all relevant times during the applicable limitations period, Defendants maintained
13 a policy or practice of deducting one-half hour from Plaintiff's recorded hours on every workday for
14 a meal period, regardless of whether or not Plaintiff was provided with a meal period.

15 88. Plaintiff is informed and believes that, at all relevant times during the applicable
16 limitations period, Defendants maintained a policy or practice of deducting one-half hour from
17 **Hourly Employee Class** members' recorded hours on every workday for a meal period, regardless
18 of whether or not **Hourly Employee Class** members were provided with a meal period.

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

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

27 91. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**
28 **Employee Class** members all earned wages every pay period at the correct rates, including

1 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
2 **Hourly Employee Class** members to perform off-the-clock work.

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

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

10 94. The regular rate of pay under California law includes all remuneration for
11 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
12 limited to, commissions, afternoon shift premiums, night premiums, temporary duty override,
13 shared rewards, incentive-All About Cust, award, pay card value, premium override, non-
14 discretionary bonuses and/or other applicable remuneration.

15 95. During the applicable limitations period, Defendants violated the rights of Plaintiff
16 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
17 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
18 and 1198 by not correctly calculating their regular rate of pay to include all applicable
19 remuneration, including but not limited to, commissions, afternoon shift premiums, night premiums,
20 temporary duty override, shared rewards, incentive-All About Cust, award, pay card value,
21 premium override, non-discretionary bonuses and/or other applicable remuneration.

22 96. California law uses the terms "compensation" and "pay" interchangeably and
23 requires that all applicable remuneration, including but not limited to, commissions, afternoon shift
24 premiums, night premiums, temporary duty override, shared rewards, incentive-All About Cust,
25 award, pay card value, premium override, non-discretionary bonuses and/or other applicable
26 remuneration, be included when calculating an employee's regular rate of pay.

27 97. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
28 compensation that did not reflect, among other things, commissions, afternoon shift premiums,

1 night premiums, temporary duty override, shared rewards, incentive-All About Cust, award, pay
2 card value, premium override, non-discretionary bonuses and/or other applicable remuneration as
3 required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions
4 when Defendants paid him premium wages in lieu of meal and/or rest periods.

5 98. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
6 during the applicable limitations period, Defendants maintained a policy or practice of paying
7 **Hourly Employee Class** members premium wages based on rates of compensation that have not
8 reflected commissions, afternoon shift premiums, night premiums, temporary duty override, shared
9 rewards, incentive-All About Cust, award, pay card value, premium override, non-discretionary
10 bonuses and/or other applicable remuneration as required by Labor Code § 226.7(b) and §§ 11 and
11 12 of the applicable Wage Order on the occasions when Defendants paid them premium wages in
12 lieu of meal and/or rest periods.

13 99. 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 Class)**

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

21 101. 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.

25 102. At all relevant times during the applicable limitations period, Plaintiff and the
26 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
27 including but not limited to, steel toed boots and gloves that were part of their uniform.

28 103. 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.

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

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

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

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

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

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

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

111. 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.

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

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

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

1 § 226(a).

2 115. 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.

10 116. 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.

16 117. 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)**

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

24 119. 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.

27 120. 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.

1 121. 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.

4 122. 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.

7 123. 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.

9 124. 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.

12 125. 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.

16 126. 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.

21 127. 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.

25 128. 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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1 138. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
2 employees and entitled to the full protections of both the Labor Code and the applicable Wage
3 Order.

4 139. 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.

10 140. 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.

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

16 142. 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.

19 143. 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.

22 144. 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.

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

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

8 **EIGHTH CAUSE OF ACTION**

9 **CIVIL PENALTIES**

10 **(Lab. Code §§ 2698 *et seq.*)**

11 147. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

12 148. During the applicable limitations period, Defendants have violated Labor Code §§
13 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

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

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

21 151. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
22 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
23 ("LWDA") and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
24 intent to investigate.

25 152. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
26 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
27 227.3, 510, 512, 1194, 1197, 1198 and 2802:

28 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198

1 and 2802, one hundred dollars (\$100) for each employee per pay period for
2 each initial violation and two hundred dollars (\$200) for each employee per
3 pay 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

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

2 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
3 employee for each initial pay period for which the employee was underpaid,
4 and one hundred dollars (\$100) for each employee for each subsequent pay
5 period for which the employee was underpaid (penalties set by Labor Code §
6 558);

7 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
8 aggrieved employee for each initial violation of Labor Code § 1197 that was
9 intentional and two hundred and fifty dollars (\$250) for each aggrieved
10 employee per pay period for each subsequent violation of Labor Code §
11 1197, regardless of whether the initial violation was intentional (penalties set
12 by Labor Code § 1197.1);

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

16 **PRAYER FOR RELIEF**

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

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

- 1 (11) Civil 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, and the general public, hereby
7 demands a jury trial on all issues so triable.
8

9 Dated: December 3, 2021

SETAREH LAW GROUP

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12 _____
13 SHAUN SETAREH
14 THOMAS SEGAL
15 FARRAH GRANT
16 Attorneys for Plaintiff
17 MARVIN TOLEDO
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