

1 Shaun Setareh (SBN 200514)
shaun@setarehlaw.com
2 Jose Maria D. Patino, Jr. (SBN 270194)
jose@setarehlaw.com
3 Maxim Gorbunov (SBN 343128)
maxim@setarehlaw.com
4 SETAREH LAW GROUP
9665 Wilshire Boulevard, Suite 430
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff ROSHAUN JOHNSON

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ALAMEDA

10 UNLIMITED JURISDICTION

11 ROSHAUN JOHNSON, on behalf of himself
and all others similarly situated, and the
12 general public,

13 *Plaintiff,*

14 v.

15 TAK COMMUNICATIONS CA, INC., a
California corporation; and DOES 1 through
16 50, inclusive,

17 *Defendants.*

Case No. 22CV013892

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**CLASS ACTION AND REPRESENTATIVE
ACTION**

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198)
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198)
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198)
4. Failure to Indemnify (Lab. Code § 2802)
5. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a))
6. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203)
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*)
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff ROSHAUN JOHNSON (“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 defendant TAK
5 COMMUNICATIONS CA, INC., a California corporation (hereinafter “Tak Communications”);
6 and DOES 1 through 50, inclusive, (collectively referred to as “Defendants”) for alleged violations
7 of the California Labor Code. As set forth below, Plaintiff alleges that Defendants have:

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

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

23 **JURISDICTION AND VENUE**

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

27 3. Venue is proper in ALAMEDA COUNTY pursuant to Code of Civil Procedure
28 section 395.5 in that liability arose there, because at least some of the transactions that are the subject

1 matter of this Complaint occurred therein and/or each defendant is found, maintains offices,
2 transacts business, and/or has an agent therein.

3 **PARTIES**

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

6 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant TAK
7 COMMUNICATIONS CA, INC. is, and at all relevant times mentioned herein, a California
8 corporation doing business in the State of California.

9 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
10 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
11 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
12 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
13 fictitiously named defendants are responsible in some manner for the occurrences, acts and
14 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
15 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
16 capacities of the DOE defendants when ascertained.

17 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
18 mentioned herein, some or all of the defendants were the representatives, agents, employees,
19 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
20 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
21 and scope of such relationship and with the full knowledge, consent, and ratification by such other
22 defendants.

23 **CLASS ALLEGATIONS**

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

28 **Relevant Time Period:** The relevant time period is defined as the time period

beginning four years prior to the filing of this action until judgment is entered.

Technician Class: All persons employed by Defendants, whether or not through any staffing agencies and/or any other third parties, in the hourly or non-exempt position of Technician in California during the **Relevant Time Period**.

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

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

Wage Statement Penalties Sub-Class: All **Technician Class** 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.

Waiting Time Penalties Sub-Class: All **Technician Class** members 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.

UCL Sub-Class: All **Technician Class** members employed by Defendants in California during the period beginning four years before the filing of this action and ending three years and one day before the filing of this action.

Expense Reimbursement Sub-Class: All **Technician Class** members employed by Defendants in California who incurred business expenses during the **Relevant Time Period**.

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

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

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

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees

- 1 with their rest periods;
- 2 iii. Whether Defendants failed to pay premium wages to class members when they have
- 3 not been provided with required meal and/or rest periods;
- 4 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 5 as a result of policies that fail to provide meal periods in accordance with California
- 6 law;
- 7 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 8 for all time worked;
- 9 vi. Whether Defendants failed to reimburse class members for all necessary business
- 10 expenses incurred during the discharge of their duties;
- 11 vii. Whether Defendants failed to provide class members with accurate written wage
- 12 statements as a result of providing them with written wage statements with
- 13 inaccurate entries for, among other things, amounts of gross and net wages, and total
- 14 hours worked;
- 15 viii. Whether Defendants applied policies or practices that result in late and/or incomplete
- 16 final wage payments;
- 17 ix. Whether Defendants are liable to class members for waiting time penalties under Labor
- 18 Code section 203;
- 19 12. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
- 20 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing
- 21 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.
- 22 13. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in
- 23 that he has no interests that are adverse to or otherwise conflict with the interests of absent class
- 24 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
- 25 and adequately represent and protect the interests of the other class members.
- 26 14. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
- 27 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
- 28 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on

1 behalf of Plaintiff and absent class members.

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

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

13 16. Plaintiff worked for Defendants as a Technician and was an hourly, non-exempt
14 employee, paid on a piece-rate basis, from approximately September 2017 through on or around July 6,
15 2021.

16 **Driving Time (Off-the-Clock)**

17 17. During the applicable limitations period, Plaintiff and the putative class were
18 required to store company vehicles at their personal address. Plaintiff and the putative class were
19 required to drive the company vehicles to each jobsite at the beginning of each work shift, as well
20 as to each subsequent jobsite where Plaintiff and the putative class would perform their job duties.

21 18. Plaintiff and the putative class were instructed to only clock-in when they reach the
22 jobsite. Accordingly, all driving time done by Plaintiff and the putative class using Defendants'
23 company vehicles was off-the-clock. This time was not properly recorded as time worked and,
24 thus, resulted in Plaintiff and the putative class not being paid by Defendants for all hours worked.

25 **Cleaning Company Vehicles (Off-the-Clock)**

26 19. During the applicable limitations period, Plaintiff and the putative class members
27 were required to bring company vehicles home at the end of each work shift. These vehicles were
28 subject to safety inspections periodically conducted by Defendants.

1 20. Plaintiff and the putative class were required to keep the interior and exterior of
2 company vehicles clean prior to every safety inspection. Plaintiff and the putative class were not
3 given time during their work shifts to clean company vehicles. As a result, Plaintiff and the
4 putative class would not be paid for the time spent washing and cleaning company vehicles prior to
5 each safety inspection.

6 **Technician Appointments (Off-the-Clock)**

7 21. During the applicable limitations period, Plaintiff and the putative class members
8 were expected to complete Technician appointments with clients in an estimated time frame
9 provided by Tak Communications. Plaintiff and the putative class members were required to clock
10 in only for the expected length of their cable technician appointments. If Plaintiff and the putative
11 class members continued working past the estimated appointment length, Plaintiff and the putative
12 class members would be forced to clock out whether or not the job had been actually completed.
13 Consequently, Plaintiff and the putative class members would then complete the remaining portion
14 of these technician appointments while off-the-clock.

15 23. Defendants did not pay wages or otherwise compensate Plaintiff or putative class
16 members for this off-the-clock time worked.

17 24. Defendants' practices, including the facts stated above and herein, have resulted in
18 substantial amounts of time not recorded as hours worked that have resulted in Defendants' failure
19 to pay substantial amounts of earned wages to Plaintiff and the putative class

20 **Missed and/or Shortened Meal Periods**

21 22. Plaintiff and the putative class members were not provided with meal periods of at
22 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of
23 requiring each meal period to be logged in company time sheets as compliant with California law
24 regardless of the time it was taken or the length of the meal period.; (2) no formal written meal and
25 rest period policy that encouraged employees to take their meal and rest periods; (3) requiring
26 employees to interrupt meal periods to assist other employees with client appointments; and (4)
27 imposing so much work on each employee such that it made it unlikely that an employee would be
28 able to take their breaks if they wanted to finish their work on time.

23. Plaintiff and the putative class members were not provided with legally mandated uninterrupted meal periods of at least thirty minutes for every 5-hour period of work. During their shifts, Plaintiff and the putative class members were required to perform work-related duties on whatever particular jobs they had started before they could clock out to take their scheduled meal breaks.

24. Plaintiff and the putative class members would routinely be interrupted during their scheduled meal periods. Due to requiring Plaintiff and putative class members to assist other employees at customer appointments, Plaintiff and putative class members would have to interrupt their meal periods in order to drive to jobsites and do work-related tasks.

25. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' requirements that required Plaintiff and the putative class assist other employees with customer appointments during meal periods.

Missed Rest Periods

26. Plaintiff alleges that, at all relevant times during the applicable limitations period, Plaintiff and the putative class were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendant's lack of a formal written rest period policy that encouraged employees to take their rest periods; (2) chronically understaffing each work shift with not enough workers; and (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take a break if he or she wanted to finish his or her work on time and adequately assist all customers.

27. Due to the heavy workload, Plaintiff and the putative class members were not provided the opportunity to take their duty-free rest periods, of at least ten (10) minutes, every four hours or major fraction thereof. Plaintiff and the putative class members were required to work through their scheduled rest breaks if they were to finish all of their work on time.

28. As a result of Defendant's policy and/or practice, Plaintiff and the putative class members were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to the amount of work they were required to do because of

1 chronic understaffing each work shift.

2 **Expense Reimbursement**

3 29. During the applicable limitations period, Plaintiff and the putative class members
4 were required to clean company vehicles prior to Defendants safety inspections. Generally, Plaintiff
5 and the putative class members purchased and used anti-rust cleaning solutions to wash and clean
6 company vehicles. Defendants did not reimburse Plaintiff and the putative class members for any of
7 the expenses related to the purchase of equipment needed to clean company vehicles.

8 30. Plaintiff and the putative class members are also required to keep their Tak
9 Communications-issued cell phones free for use to answer calls from management at any time
10 during their work shifts. Plaintiff and the putative class members are expected to answer calls from
11 management at all times on their company cell phones. Because Plaintiff and the putative class
12 members were required to keep their company-issued cell phones available for calls from
13 management, Plaintiffs and the putative class members would need to utilize their personal cell
14 phones to communicate directly with clients to schedule technician appointments while driving to
15 appointments off-the-clock. Despite these communications being work-related, Defendants did not
16 reimburse Plaintiff and the putative class members for any of the expenses related to these uses of
17 their personal cell phones.

18 31. Additionally, Plaintiff and the putative class members were required to purchase
19 tools necessary accomplish work-related tasks during cable technician appointments. Plaintiff and
20 the putative class members were required to purchase items such as flashlights, gloves, drill bits,
21 and boots in order to safety and effectively complete tasks during cable technician appointments.
22 Defendants did not reimburse Plaintiff and the putative class members for the aforementioned tools
23 and safety equipment necessary to complete their job duties.

24 32. Accordingly, Defendant failed to reimburse Plaintiff and the putative class for the
25 necessary business expenses they incurred.

26 **Inaccurate Wage Statements**

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

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

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

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

37. Defendant 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 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)

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

39. 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”).

40. 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.

41. 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-

1 exempt employees an hour of premium wages on each workday that the employee is not provided
2 with the required meal period.

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

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

7 44. Section 11 of the applicable Wage Order states:

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

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

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

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

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

28 49. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**

1 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
2 regular rates of pay when required meal periods were not provided.

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

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

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

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

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

25 56. Compensation for missed rest periods constitutes wages within the meaning of Labor
26 Code § 200.

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

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

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

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

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

13 62. 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 **Rest Period**
15 **Sub-Class** members, seeks to recover reasonable attorneys' fees.

16 **THIRD CAUSE OF ACTION**

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

18 **(Lab. Code §§ 223, 226.2, 510, 1194, 1197 and 1198)**

19 **(Plaintiff and Technician Class)**

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

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

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

27 66. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
28 employees at least the minimum wage set forth therein for all hours worked, which consists of all

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

2 67. Labor Code § 1194 invalidates any agreement between an employer and an
3 employee to work for less than the minimum or overtime wage required under the applicable Wage
4 Order.

5 68. Labor Code § 1194.2 entitles non-exempt employees to recover liquidated damages
6 in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the
7 underlying unpaid minimum wages and interest thereon.

8 69. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than
9 the minimum wage required under the applicable Wage Order for all hours worked during a payroll
10 period.

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

14 71. Labor Code § 1198 makes it unlawful for employers to employ employees under
15 conditions that violate the applicable Wage Order.

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

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

22 74. Labor Code § 226.2 requires employers to pay employees compensated on a piece-
23 rate basis for any and all “other nonproductive time” under the employer’s control that is not
24 directly related to the activity being compensated on a piece-rate basis at no less than the highest
25 minimum wage applicable to the employment.

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

1 hours worked in excess of forty hours in one workweek, and for the first eight hours worked on the
2 seventh consecutive day of one workweek.

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

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

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

13 79. During the relevant time period, Defendants failed to pay Plaintiff and **Technician**
14 **Class** members all earned wages every pay period at the correct rates, including overtime rates and
15 other nonproductive time, because Defendants directed, permitted, or otherwise encouraged
16 Plaintiff and **Technician Class** members to perform off-the-clock work.

17 80. As a result of Defendants' unlawful conduct, Plaintiff and **Technician Class**
18 members have suffered damages in an amount subject to proof, to the extent they were not paid the
19 full amount of wages earned during each pay period during the applicable limitations period,
20 including overtime wages.

21 81. Pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
22 behalf of himself and **Technician Class** members, seeks to recover unpaid straight time and
23 overtime wages, interest thereon, and costs of suit.

24 82. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
25 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Technician**
26 **Class** members, seeks to recover reasonable attorneys' fees.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO INDEMNIFY**

3 **(Lab. Code § 2802)**

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

5 83. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

6 84. Labor Code section 2802(a) states:

7 An employer shall indemnify his or her employee for all necessary expenditures or
8 losses incurred by the employee in direct consequence of the discharge of his or her
9 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.

10 85. At all relevant times during the applicable limitations period, Plaintiff and the
11 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
12 including but not limited to, vehicle cleaning products, drill bits, boots, flashlights, gloves, and costs
13 associated with usage of personal cell phones.

14 86. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid
15 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the
16 discharge of their duties.

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

20 88. At all relevant times during the applicable limitations period, Defendants required
21 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused
22 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
23 **Reimbursement Class** members for all such expenditures.

24 89. At all relevant times during the applicable limitations period, Defendants required
25 Plaintiff and **Expense Reimbursement Class** members to purchase and maintain uniforms and
26 apparel unique to Defendants at Plaintiff's and **Expense Reimbursement Class** members' expense.
27 Defendants failed to indemnify Plaintiff and **Expense Reimbursement Class** members for all such
28 expenditures.

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

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

7 92. Plaintiff, on behalf of himself , and **Expense Reimbursement Class** members, seeks
8 interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to
9 Code of Civil Procedure § 1021.5.

10 **FIFTH CAUSE OF ACTION**

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

12 **(Lab. Code § 226)**

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

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

15 94. Labor Code § 226(a) states:

16 An employer, semimonthly or at the time of each payment of wages, shall furnish to
17 his or her employee, either as a detachable part of the check, draft, or voucher paying
18 the employee's wages, or separately if wages are paid by personal check or cash, an
19 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked by the employee, except as provided in subdivision (j), (3) the number of
21 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
22 rate basis, (4) all deductions, provided that all deductions made on written orders of
23 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
24 inclusive dates of the period for which the employee is paid, (7) the name of the
25 employee and only the last four digits of his or her social security number or an
26 employee identification number other than a social security number, (8) the name and
27 address of the legal entity that is the employer and, if the employer is a farm labor
28 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.

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

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

11 97. Plaintiff is informed and believes that Defendants’ failure to provide him and **Wage**
12 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
13 that Defendants had the ability to provide them with accurate wage statements but had intentionally
14 provided them with written wage statements that Defendants knew do not comply with Labor Code
15 § 226(a).

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

24 99. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and **Wage**
25 **Statement Penalties Sub-Class** members, seeks the greater of actual damages or fifty dollars
26 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
27 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code §
28 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per class

1 member.

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

5 **SIXTH CAUSE OF ACTION**

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

7 **(Lab. Code §§ 201–203)**

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

9 101. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

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

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

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

26 108. Plaintiff is informed and believes that, at all relevant times during the applicable
27 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
28 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code

1 §§ 201 or 202 by failing to timely pay them all final wages.

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

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

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

14 **SEVENTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

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

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

18 112. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

19 113. Business and Professions Code § 17200 defines "unfair competition" to include any
20 unlawful business practice.

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

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

28 116. Plaintiff, on behalf of himself and the **UCL Sub-Class** members, re-alleges and

1 incorporates the FIRST, SECOND, THIRD, FOURTH, FIFTH, and SIXTH causes of action herein.

2 117. Plaintiff lost money and/or property as a result of the aforementioned unfair
3 competition.

4 118. Defendants have or may have acquired money by means of unfair competition.

5 119. Plaintiff is informed and believes and thereupon alleges that, by committing the
6 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,
7 225, 226.6, 354, 408, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by
8 violating the Labor Code as alleged herein.

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

14 121. At all relevant times, Plaintiff and **UCL Sub-Class** members have been non-exempt
15 employees and entitled to the full protections of both the Labor Code and the applicable Wage
16 Order.

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

23 123. As a result of Defendants' violations of the Labor Code during the applicable
24 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
25 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
26 conduct.

27 124. Plaintiff is informed and believes that other similarly situated persons have been
28 subject to the same unlawful policies or practices of Defendants.

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

126. California’s Unfair Competition Law (“UCL”) permits civil recovery and injunctive relief for “any unlawful, unfair or fraudulent business act or practice,” including a practice or act that violates, or is considered unlawful under, any other state or federal law.

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

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

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

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

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

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

132. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover

1 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
2 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

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

6 134. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
7 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
8 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
9 intent to investigate.

10 135. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
11 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
12 512, 1194, 1197, 1198 and 2802:

- 13 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198
14 and 2802, one hundred dollars (\$100) for each employee per pay period for
15 each initial violation and two hundred dollars (\$200) for each employee per
16 pay period for each subsequent violation (penalties set by Labor Code §
17 2699(f)(2));
- 18 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
19 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 20 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
21 employee for each initial violation that was neither willful nor intentional,
22 two hundred dollars (\$200) for each employee, plus 25% of the amount
23 unlawfully withheld from each employee, for each initial violation that was
24 either willful or intentional, and two hundred dollars (\$200) for each
25 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
26 from each employee, for each subsequent violation, regardless of whether the
27 subsequent violation was either willful or intentional (penalties set by Labor
28 Code § 210);

- iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus twenty-five percent (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);

136. 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

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

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

17 **DEMAND FOR JURY TRIAL**

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

20
21 Dated: September 6, 2022

SETAREH LAW GROUP

22
23 
24 _____
25 SHAUN SETAREH
26 JOSE MARIA D. PATINO, JR.
27 MAXIM GORBUNOV
28 Attorneys for Plaintiff
ROSHAUN JOHNSON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

On September 6, 2022, I served the foregoing documents described as:

FIRST AMENDED COMPLAINT

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

Brandon McKelvey
brandon@medinamckelvey.com
Tim Nelson
tim@medinamckelvey.com
Doug Leach
doug@medinamckelvey.com

Samantha Shapiro
samantha@medinamckelvey.com
Andrew Sayre
andrew@medinamckelvey.com

MEDINA MCKELVEY LLP
925 Highland Pointe Dr, Suite 300
Roseville, CA 95678
**Attorneys for Defendant TAK
COMMUNICATIONS CA, INC.**

[X] BY E-MAIL OR ELECTRONIC TRANSMISSION

Based on a Court order or on an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) described above to be sent to the person(s) listed at the address listed above.

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

Executed on September 6, 2022, at Beverly Hills, California.



Eric Sams