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**FILED**  
 Superior Court of California  
 County of Los Angeles  
 01/10/2023

David W. Slayton, Executive Officer / Clerk of Court  
 By: M. Arellanes Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 FOR THE COUNTY OF LOS ANGELES  
 11 UNLIMITED JURISDICTION  
 12

13 ADAN ORTIZ, on behalf of himself and all  
 14 others similarly situated, and the general  
 public,

15 *Plaintiff,*

16 v.

17 WEBER DISTRIBUTION, LLC, a California  
 18 Limited Liability Company; BARRETT  
 BUSINESS SERVICES, INC., a Maryland  
 19 corporation; and DOES 1 through 50,  
 inclusive,

20 *Defendants.*  
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Case No. 22STCV34999

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

**CLASS AND REPRESENTATIVE ACTION**

**FIRST AMENDED COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Pay Vacation Wages (Lab. Code § 227.3);
5. Failure to Indemnify (Lab. Code § 2802);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
9. Civil Penalties (Lab. Code § 2698, *et seq.*)

**JURY TRIAL DEMANDED**

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

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against defendants WEBER  
5 DISTRIBUTION, LLC, a California Limited Liability Company; BARRETT BUSINESS  
6 SERVICES, INC., a Maryland corporation; and DOES 1 through 50, inclusive, (collectively  
7 referred to as "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff  
8 alleges that Defendants have

9 (1) failed to provide Plaintiff and all other similarly situated individuals with meal  
10 periods;

11 (2) failed to provide them with rest periods;

12 (3) failed to pay them premium wages for missed meal and/or rest periods;

13 (4) failed to pay them at least minimum wage for all hours worked;

14 (5) failed to pay them for all vested vacation pay;

15 (6) failed to reimburse them for all necessary business expenses;

16 (7) failed to provide them with accurate written wage statements; and

17 (8) failed to pay them all of their final wages following separation of employment.

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

21 **JURISDICTION AND VENUE**

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

25 3. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure  
26 §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that  
27 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains  
28 offices, transacts business, and/or has an agent therein.

1 **PARTIES**

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

4 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant WEBER  
5 DISTRIBUTION, LLC is, and at all relevant times mentioned herein, a California Limited  
6 Liability Company doing business in the State of California.

7 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant BARRETT  
8 BUSINESS SERVICES, INC. is, and at all relevant times mentioned herein, a Maryland  
9 corporation doing business in the State of California.

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

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

24 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

17           **Vacation Pay Class:** All persons employed by Defendants in California who earned  
18 paid vacation days, including but not limited to, "Floating Holidays," without  
receiving compensation for each vested paid vacation day during the **Relevant Time**  
**Period**.

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

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

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

- i. Whether Defendants maintained a policy or practice of failing to provide employees with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees with their rest periods;
- iii. Whether Defendants failed to pay premium wages to class members when they have not been provided with required meal and/or rest periods;
- iv. Whether Defendants failed to pay minimum and/or overtime wages to class members as a result of policies that fail to provide meal periods in accordance with California law;
- v. Whether Defendants failed to pay minimum and/or overtime wages to class members for all time worked;
- vi. Whether Defendants failed to provide proportionate accruals for vested vacation time for class members as required by California law;
- vii. Whether Defendants subjected the vacation time and/or floating holidays they offer to class members to forfeiture;
- viii. Whether Defendants failed to reimburse class members for all necessary business expenses incurred during the discharge of their duties;
- ix. Whether Defendants failed to provide class members with accurate written wage statements as a result of providing them with written wage statements with inaccurate entries for, among other things, amounts of gross and net wages, and total hours worked;
- x. Whether Defendants applied policies or practices that result in late and/or incomplete final wage payments;
- xi. Whether Defendants are liable to class members for waiting time penalties under Labor Code section 203;
- xii. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;
14. **Typicality**: Plaintiff's claims are typical of the other class members' claims. Plaintiff

1 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing  
2 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

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

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

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

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

22 18. Plaintiff worked for Defendants as an hourly, non-exempt employee from  
23 approximately October 2021 through June 2022.

24 **Off-the-Clock Work**

25 19. Plaintiff and the putative class were trained to clock in for each work shift using a  
26 fingerprint scanner. The fingerprint scanner that Plaintiff and the putative class were trained to use  
27 regularly failed to register their fingerprint, and it could take Plaintiff and the putative class  
28 approximately five (5) to ten (10) minutes to resolve the issue and get clocked in.

20. The time spent resolving issues with the fingerprint scanner would not be accurately recorded and therefore resulted in Plaintiff and the putative class not being paid for all hours worked while waiting for the fingerprint scanner to register. Defendants knew or should have known about the faulty fingerprint scanners, and that they regularly failed to accurately register when an employee “clocked-in.”

21. It is only upon resolving the fingerprint scanner issues that an employee will be recognized as being “clocked in” by Defendants, which is the time recognized as the actual start time and when Plaintiff and the putative class would begin to be paid by Defendants.

22. Accordingly, this time was not properly recorded as time worked and resulted in Plaintiff and the putative class not being paid for all hours worked by Defendants.

## Time Shaving

23. Additionally, Plaintiff and the putative class were regularly shorted hours when they were paid, such that the time they were being paid for did not match the actual time that they were working. Defendants knew or should have known that they were shorting hours on Plaintiff and the putative class's pay. Defendants' had a duty to accurately maintain records. Furthermore, Plaintiff and members of the putative class complained to Defendants regarding the time shaving.

### Missed Meal Periods

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

25. Defendants have a policy and/or practice of regularly requiring Plaintiff and the putative class to take their meal periods after the fifth hour of work. Also, Plaintiff and the putative class were required to clock out for meal periods even though they continued to perform work at the direction of their supervisors. Furthermore, Plaintiff and the putative class regularly

experienced issues with the time clock (fingerprint scanner) not registering correctly. As a result, Plaintiff and the putative class were required to come back to work from their meal periods approximately five (5) minutes early to clock in. It would regularly take Plaintiff and the putative class as long as ten minutes to get clocked back in. On many occasions, Defendants simply automatically adjusted Ortiz and the aggrieved employees' time to reflect a 30 minute meal period, when in fact, they were unable to take such a meal period.

26. As a result of Defendants' practices and/or policies, 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' productivity requirements and/or direct requests from their supervisors that required Plaintiff and the putative class to work through their meal periods in order to complete their assignments on time.

### Missed Rest Periods

27. 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) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

28. Defendants have a policy and/or practice of requiring Plaintiff and the putative class to work through their rest breaks when the volume of work at their work location was high. Defendants planned rest breaks around Plaintiff and the putative class's meal period, which was regularly taken well after the fifth hour. As a result of these practices and/or policies, Plaintiff and the putative class were regularly denied rest breaks as they were forced to keep working with equipment, inspecting pallets, and operating machinery in accordance with the volume of work and at the direction of their supervisors.

29. As a result of Defendants' policy, Plaintiff and the putative class were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked

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

### 3 **Vacation Pay**

4 30. Plaintiff and the putative class accrued vacation wages during their employment with  
5 Defendants.

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

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

13 33. Plaintiff and the putative class are entitled to vacation accrued during their  
14 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all  
15 accrued vacation pay.

### 16 **Expense Reimbursement**

17 34. Plaintiff and the putative class members were required to utilize their own personal  
18 tools to perform their job duties.

19 35. Plaintiff and the putative class members were not reimbursed for business expenses  
20 incurred in maintaining their tools.

21 36. In addition, Plaintiff and the putative class members were not paid at least two times  
22 the minimum wage for all hours worked.

23 37. Defendants failed to reimburse Plaintiff and the putative class for such necessary  
24 business expenses incurred by them.

### 25 **Wage Statements**

26 38. Plaintiff and the putative class were not provided with accurate wage statements as  
27 mandated by law pursuant to Labor Code § 226.

28 39. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages

1 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-  
2 clock” work were not included.

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

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

9 42. Defendants failed to comply with Labor Code section 226(a)(8) as “the name and  
10 address of the legal entity that is the employer” were not accurately reflected in that WEBER  
11 DISTRIBUTION, LLC was not included.

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

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

20 44. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged  
21 herein.

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

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

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

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

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

9           50.     Section 11 of the applicable Wage Order states:

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

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

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

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

26           54.     Plaintiff alleges that, at all relevant times during the applicable limitations period,  
27 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**  
28 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and

1 failed to pay them premium wages as required by Labor Code § 512 and the applicable Wage  
2 Order.

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

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

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

13 58. 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 the **Meal**  
15 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

## 16 SECOND CAUSE OF ACTION

### 17 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

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

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

28 62. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers

1 from requiring employees to work during required rest periods and require employers to pay non-  
2 exempt employees an hour of premium wages at the employees' regular rates of pay, on each  
3 workday that the employee is not provided with the required rest period(s).

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

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

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

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

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

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

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

23 **THIRD CAUSE OF ACTION**

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

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

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

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

28 71. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have

1 been non-exempt employees of Defendants entitled to the full protections of the Labor Code and the  
2 applicable Wage Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

16          85. At all relevant times, Defendants failed to pay hourly wages to Plaintiff for all time  
17 worked, including but not limited to, overtime wages at statutory and/or agreed rates by suffering or  
18 permitting him to work off-the-clock while putting on and taking off steel-toed boots and their  
19 required work vest.

20          86. Plaintiff is informed and believes that, at all relevant times during the applicable  
21 limitations period, Defendants maintained a policy or practice of not paying hourly wages to  
22 **Hourly Employee Class** members for all time worked, including but not limited to overtime wages,  
23 at statutory and/or agreed rates by suffering or permitting them to work off-the-clock while putting  
24 on and taking off steel-toed boots and their required work vest.

25          87. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**  
26 **Employee Class** members all earned wages every pay period at the correct rates, including  
27 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and  
28 **Hourly Employee Class** members to perform off-the-clock work.

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

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

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

11                               **FOURTH CAUSE OF ACTION**

12                               **FAILURE TO PAY VACATION WAGES**

13                               **(Lab. Code § 227.3)**

14                               **(Plaintiff and Vacation Pay Class)**

15           91.     Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

16           92.     California Labor Code section 227.3 provides:

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

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

24           94.     As a result of Defendants' reimbursement policies and practices, Plaintiff is  
25 informed and believes and thereon alleges that Defendants failed to reimburse him and **Vacation**  
26 **Pay Class** members for all accrued vacation wages.

27           95.     By reason of the above, Plaintiff and the members of the **Vacation Pay Class** are  
28 entitled to restitution for all unpaid amounts due and owing to within four years (4) of the date of

1 the filing of the original Complaint until the date of entry of judgment.

2 96. Plaintiff, on behalf of himself and the members of the **Vacation Pay Class**, seeks  
3 interest thereon pursuant to California Labor Code section 218.6, costs pursuant to California  
4 Labor Code section 218.6, and reasonable attorneys' fees pursuant to California Code of Civil  
5 Procedure section 1021.5.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code § 2802)**

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

10 97. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

11 98. Labor Code section 2802(a) states:

12 An employer shall indemnify his or her employee for all necessary expenditures or  
13 losses incurred by the employee in direct consequence of the discharge of his or her  
14 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.

15 99. At all relevant times during the applicable limitations period, Plaintiff and the  
16 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,  
17 including but not limited to, steel-toed boots, a high visibility work vest, safety mask, safety  
18 equipment, and knives. Defendants required that Plaintiff and the putative class members purchase  
19 these items, which were necessary for the execution of their job duties.

20 100. Plaintiff is informed and believes and thereupon alleges that the reimbursement paid  
21 by Defendants was insufficient to indemnify Plaintiff for all necessary expenses incurred in the  
22 discharge of their duties.

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

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

28 103. Section 9 of the applicable Wage Order states:

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

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

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

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

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

20 108. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks  
21 interest thereon and costs pursuant to Labor Code § 218.6 and reasonable attorneys' fees pursuant to  
22 Code of Civil Procedure § 1021.5.

## 23 SIXTH CAUSE OF ACTION

### 24 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

25 **(Lab. Code § 226)**

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

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

28 110. 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

1 the employee's wages, or separately if wages are paid by personal check or cash, an  
2 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
3 worked by the employee, except as provided in subdivision (j), (3) the number of  
4 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-  
5 rate basis, (4) all deductions, provided that all deductions made on written orders of  
6 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the  
7 inclusive dates of the period for which the employee is paid, (7) the name of the  
8 employee and only the last four digits of his or her social security number or an  
9 employee identification number other than a social security number, (8) the name and  
10 address of the legal entity that is the employer and, if the employer is a farm labor  
11 contractor, as defined in subdivision (b) of Section 1682, the name and address of the  
12 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.

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

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

23 113. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**  
24 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in  
25 that Defendants had the ability to provide them with accurate wage statements but had intentionally  
26 provided them with written wage statements that Defendants knew do not comply with Labor Code  
27 § 226(a).

28 114. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,

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

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

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

#### 17 SEVENTH CAUSE OF ACTION

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

19 **(Lab. Code §§ 201–203)**

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

21 117. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

1 all final wages at the time of resignation.

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

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

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

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

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

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

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

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

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

4 **(Plaintiff and UCL Class)**

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

6 129. Business and Professions Code § 17200 defines “unfair competition” to include any  
7 unlawful business practice.

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

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

15 132. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and  
16 incorporates the FIRST, SECOND, THIRD, and FOURTH causes of action herein.

17 133. Plaintiff lost money and/or property as a result of the aforementioned unfair  
18 competition.

19 134. Defendants have or may have acquired money by means of unfair competition.

20 135. Plaintiff is informed and believes and thereupon alleges that, by committing the  
21 Labor Code violations described in this Complaint, Defendants violated Labor Code §§ 215, 216,  
22 225, 226.6, 1175, 1199 and 2802. Defendants thus committed misdemeanors by violating the Labor  
23 Code as alleged herein.

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

1           137. 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           138. 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           139. 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           140. Plaintiff is informed and believes that other similarly situated persons have been  
15 subject to the same unlawful policies or practices of Defendants.

16           141. 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           142. 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           143. 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.

144. Pursuant to Business and Professions Code § 17203, Plaintiff, on behalf of himself and **UCL 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.

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

### NINTH CAUSE OF ACTION

## CIVIL PENALTIES

**(Lab. Code §§ 2698 *et seq.*)**

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

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

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

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

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

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

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: January 10, 2023

SETAREH LAW GROUP

10  
11   
12 \_\_\_\_\_  
13 SHAUN SETAREH  
14 THOMAS SEGAL  
15 FARRAH GRANT  
16 Attorneys for Plaintiff  
17 ADAN ORTIZ  
18  
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1 **PROOF OF SERVICE**

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

5 On January 10, 2023, I served the foregoing documents described as:

6 **FIRST AMENDED COMPLAINT**

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

8 WEBER DISTRIBUTION, LLC.  
9 c/o Margaret M. Movius  
10 13530 Rosecrans Ave.  
11 Santa Fe Springs, CA 90670  
12 **Agent for Service of Process for**  
13 **Defendant Weber Distribution, LLC.**  
14 **(BY MAIL)**

Kieran D. Hartley  
([Kieran.Hartley@aalrr.com](mailto:Kieran.Hartley@aalrr.com))  
Susan M. Steward ([SSteward@aalrr.com](mailto:SSteward@aalrr.com))  
Danielle E Amaral  
([Danielle.Amaral@aalrr.com](mailto:Danielle.Amaral@aalrr.com))  
Atkinson, Andelson, Loya, Ruud & Romo  
12800 Center Court Dr. Suite 300  
Cerritos, CA 90703  
**Counsel for Defendant Barrett Business**  
**Services, WC. (BY E-MAIL)**

15 **[X] BY MAIL**

16 I am readily familiar with the practice of Setareh Law Group for the collection and  
17 processing of correspondence for mailing with the United States Postal Service. It is the  
18 practice that correspondence is deposited with United States Postal Service the same day it is  
19 submitted for mailing with postage thereon fully prepaid at Beverly Hills, California. I am  
aware that on motion of the party served, service is presumed invalid if postal cancellation date  
or postage meter date is more than one day after date of deposit for mailing in affidavit.

20 **[X] BY E-MAIL OR ELECTRONIC TRANSMISSION**

21 Based on a Court order or on an agreement by the parties to accept service by e-mail or  
22 electronic transmission, I caused the document(s) described above to be sent to the person(s)  
23 listed at the address listed above. I did not receive, within a reasonable time after the  
transmission, any electronic message or other indication that the transmission was unsuccessful.

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

26 Executed on January 10, 2023, at Beverly Hills, California.

27 \_\_\_\_\_/s/ Wendy Sarabia

28 Wendy Sarabia