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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

KEVIN WALTERS, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

UFP THORNTON, LLC, a limited liability
company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. STK-UOE-2022-0012249

**FIRST AMENDED CLASS AND
REPRESENTATIVE CLASS ACTION
COMPLAINT FOR:**

- (1) **FAILURE TO PAY OVERTIME WAGES (LABOR CODE §§ 204, 510, 558, 1194, 1198);**
- (2) **FAILURE TO PAY MEAL PERIOD PREMIUM WAGES AT REGULAR RATE OF COMPENSATION (LABOR CODE § 226.7);**
- (3) **MEAL PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 512, 1198);**
- (4) **REST PERIOD VIOLATIONS (LABOR CODE §§ 226.7, 516, 1198);**
- (5) **WAGE STATEMENT VIOLATIONS (LABOR CODE § 226, *et seq.*);**
- (6) **WAITING TIME PENALTIES (LABOR CODE §§ 201-203);**
- (7) **FAILURE TO PAY VACATION WAGES AT PROPER RATE OF PAY AT TERMINATION (LABOR CODE §§ 201-203, 227.3)**
- (8) **FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE §§ 2802, 2804);**
- (9) **UNFAIR COMPETITION (BUS. & PROF. CODE § 17200, *et seq.*);**
- (10) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Kevin Walters ("Plaintiff"), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against UFP Thornton, LLC, a
3 limited liability company; and Does 1 through 100, inclusive (collectively, "Defendants"), and
4 on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California
8 Business and Professions Code section 17200, *et. seq.*; Labor Code sections 201-204, 226, 226.7,
9 227.3, 246, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq*; and Industrial Welfare
10 Commission Wage Order No. 7 ("Wage Order 7"), in addition to seeking declaratory relief and
11 restitution. This class action is brought pursuant to California Code of Civil Procedure section
12 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because
13 the amount in controversy exceeds this Court's jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in San Joaquin County. Defendants own, maintain offices, transact business, have an
18 agent or agents within San Joaquin County, and/or otherwise are found within San Joaquin
19 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants' policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 1194, 1198, 2802, 2804, 2698 *et seq*; California
28 Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order 7, which

1 sets employment standards for employees in the mercantile industry, which includes any business
2 operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale
3 or retail.

4 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
5 years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
6 business as a lumber supplier, and that they employed Plaintiff and other similarly situated non-
7 exempt employees within San Joaquin County and the state of California.

8 5. Plaintiff does not know the true names or capacities, whether individual, partner,
9 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
10 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
12 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
13 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
14 and proximately caused Plaintiff and the Classes (as defined in Paragraph 20) to be subject to the
15 unlawful employment practices, wrongs, injuries, and damages complained of herein.

16 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

18 7. At all times herein mentioned, each of said Defendants participated in the acts
19 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
20 each of them, were the agents, servants, and employees of each of the other Defendants, as well
21 as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each of the acts or omissions alleged herein.

24 8. At all times mentioned herein, Defendants, and each of them, were members of
25 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
26 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
27 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
28 Members (as defined in Paragraph 20).

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1 just \$31.125 per hour, which is 1.5 times \$20.75, not Plaintiff's base rate of \$21.75.¹ As a result
2 of this practice, Plaintiff and other non-exempt employees have been further underpaid for their
3 overtime and/or double-time compensation.

4 12. In addition to resulting in the under-payment of overtime compensation,
5 Defendants' failure to incorporate Incentive Pay into the "regular rate" also resulted in a failure
6 to pay meal period premiums at Plaintiff's and other non-exempt employees' "regular rate of
7 compensation" as required under Labor Code § 226.7. The California Supreme Court has held
8 that the terms "regular rate of pay" used in Labor Code § 510 and "regular rate of compensation"
9 used in Labor Code § 226.7 are synonymous, and therefore, just as bonuses and other
10 remuneration must be incorporated into the "regular rate of pay" when calculating overtime pay,
11 they must also be incorporated into the "regular rate of compensation" when calculating meal and
12 rest period premiums under Labor Code § 226.7. *See Ferra v. Loews Hollywood Hotel, LLC*, 11
13 Cal.5th 858, 862 (2021) (holding "that the terms are synonymous: 'regular rate of compensation'
14 under section 226.7(c), like 'regular rate of pay' under section 510(a), encompasses all
15 nondiscretionary payments, not just hourly wages.") When paying meal period premiums, which
16 were denoted as "Meal Prem" on wage statements, Defendants failed to incorporate Incentive Pay
17 and have thereby underpaid Plaintiff and other non-exempt employees their meal period premium
18 wages. Indeed, Defendants frequently failed to even pay meal period premiums at employees'
19 base rate of pay. For example, in the April 3-16, 2022 and April 17-30, 2022 pay periods,
20 Defendants paid Plaintiff meal period premiums at the rate of \$20.75, which was below even his
21 base rate of pay of \$21.75 (at which he was paid all of his regular hours during those pay periods).
22 Defendants also failed to incorporate the value of "EE Choice" payments of \$28.85 per pay period
23 into the "regular rate of compensation" in those pay periods. As a result of Defendants' failure to
24 pay meal period premiums at the proper rate of compensation, Plaintiff and other non-exempt
25 employees have been underpaid their meal period premiums under Labor Code § 226.7.

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28 ¹ During this pay period Plaintiff also earned an "EE Choice" payment of \$28.85 which was not
incorporated into his "regular rate" of pay, either.

1 13. Similarly, Defendants have failed to compensate Plaintiff and other non-exempt
2 employees at their “regular rate” of pay for sick time hours, as required under Labor Code § 246,
3 by failing to include Incentive Pay in the regular rate when calculating employees’ sick time pay,
4 and by sometimes paying less than even employees’ *base* rate of pay for sick pay. *See* Labor Code
5 § 246(l)(1) (requiring that “[p]aid sick time for nonexempt employees shall be calculated in the
6 same manner as the regular rate of pay for the workweek in which the employee uses paid sick
7 time, whether or not the employee actually works overtime in that workweek.”) For example,
8 during the pay period of February 6-19, 2022, Plaintiff was paid for 40.0 hours of sick pay at a
9 rate of \$18.75 per hour, even though his regular hours during that pay period (as well as his regular
10 hours in the prior two pay periods) were paid at \$19.75 per hour. Moreover, during that same pay
11 period, Plaintiff earned an “EE Choice” payment of \$28.85, and that payment, too, was not
12 incorporated into the “regular rate” when paying Plaintiff sick pay. As a result of these practices,
13 Plaintiff and other non-exempt employees have been underpaid their sick pay wages.

14 14. In addition, Defendants have failed to provide Plaintiff and other non-exempt
15 employees with all statutorily mandated meal periods. Specifically, Defendants failed to provide
16 Plaintiff with a second meal period on days when he worked over 10 hours. While Defendants
17 did pay some meal period premiums (as described above), Defendants failed to pay all meal
18 period premiums due and owing to Plaintiff. As a result of Defendants’ meal period
19 policies/practices, Plaintiff and other non-exempt employees have not been provided all legally
20 mandated meal periods and have not paid all meal period premiums to which they were entitled.

21 15. Defendants have also failed to authorize and permit compliant rest periods to
22 Plaintiff and other non-exempt employees. Specifically, Defendants have failed to authorize and
23 permit third rest periods when Plaintiff worked over 10 hours in a single shift. Despite failing to
24 authorize and permit legally compliant rest periods to Plaintiff and other non-exempt employees,
25 Defendants have failed to pay the rest period premiums required by Labor Code § 226.7. Upon
26 information and belief, during at least a portion of the putative class period, Defendants
27 maintained no payroll code or other mechanism for paying rest period premiums when
28 Defendants failed to authorize and permit a legally compliant rest period.

1 16. Defendants have also failed to reimburse Plaintiff and other employees for
2 expenses they incurred in the course of their employment. Specifically, Plaintiff was required to
3 use his personal cellular phone to perform work-related tasks, such as using the calculator on his
4 phone to calculate load weights to ensure the vehicles he loaded were not overweight. On
5 information and belief, other forklift operators likewise were required to use their personal cell
6 phones (or other devices with calculators) to perform these work-related tasks. Defendants knew
7 – or reasonably should have known – that Plaintiff and other forklift operators had to use their
8 personal cell phones (or other devices) for work-related purposes, but Defendants failed to
9 reimburse them for this work-related expense. As a result, Plaintiff and other employees are
10 entitled to reimbursement pursuant to Labor Code § 2802 and *Cochran v. Schwan's Home*
11 *Service, Inc.*, 228 Cal.App.4th 1137 (2014).

12 17. Defendants also failed to pay Plaintiff all of his earned but unused vacation wages
13 at his regular rate of pay at this termination. Specifically, Plaintiff's final wage statement (dated
14 June 24, 2022) reflects that he was paid for his regular hours at \$21.75 per hour (as he had been
15 in several prior pay periods), but was paid out his accrued vacation wages at just \$20.75 per hour.
16 This practice violates Labor Code § 227.3, which requires that all accrued but unused vacation be
17 paid out to separating employees "at [their] final rate" of pay; and *Suastez v. Plastic Dress-Up*
18 *Co.*, 31 Cal.3d 774 (1982), which held that "[o]nce vested, the right [to vacation pay] is protected
19 from forfeiture by Section 227.3."

20 18. As a result of Defendants' failure to pay all earned wages (including but not limited
21 to overtime wages, meal and rest period premium wages, sick pay wages, and vacation wages),
22 Defendants failed to pay all wages to Plaintiff and other formerly employed non-exempt
23 employees at the separation of their employment.

24 19. As a further result of Defendants' failure to pay all earned wages, Defendants
25 maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and other
26 non-exempt employees. These failures resulted in employee wage statements including inaccurate
27 information regarding, *inter alia*, gross wages earned, net wages earned, and the rates of pay in
28 effect in each pay period.

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1 f. The Expense Reimbursement Class consists of all of the Defendants' forklift
2 operators in California who were required to calculate the weight of loads they were
3 loading onto trucks as part of their job duties, and were not provided by Defendants with a
4 calculator to perform said calculations, at any time from four years immediately preceding
5 the filing of this action through the present.

6 g. The Vacation Wage Class consists of all of the Defendants' former employees
7 who were paid accrued but unused vacation wages at their termination of employment at a
8 rate lower than their final rate of pay, at any time from three years preceding the filing of
9 this action through the present.

10 h. The Wage Statement Class consists of all members of the Overtime Class, Meal
11 Period Premium Underpayment Class, Meal Period Class, and/or Rest Period Class, who
12 received a wage statement at any time from one year immediately preceding the filing of
13 this lawsuit through the present.

14 i. The Waiting Time Class consists of all members of the Overtime Class, Meal
15 Period Premium Underpayment Class, Meal Period Class, Rest Period Class, Sick Pay
16 Class, and/or Vacation Wage Class, who are no longer employed by Defendants and who
17 last worked for Defendants at any time from three years immediately preceding the filing
18 of this lawsuit through the present.

19 21. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
20 joinder of all members would be unfeasible and impracticable. The membership of the Classes is
21 unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than
22 fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via
23 Defendants' employment records.

24 22. **Common Questions of Law and Fact Predominate/Well Defined Community**
25 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
26 situated employees, which predominate over questions affecting only individual members
27 including, without limitation to:
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- i. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, Sections 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- ii. Whether Defendants paid meal period premiums at the proper "regular rate of compensation" to Meal Period Premium Underpayment Class members;
- iii. Whether Defendants paid sick pay wages at the proper "regular rate" of pay to Sick Pay Class members;
- iv. Whether Defendants reimbursed all work-related expenses incurred by members of the Expense Reimbursement Class;
- v. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;
- vi. Whether Defendants authorized and permitted legally compliant rest periods to members of the Rest Period Class;
- vii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226;
- viii. Whether Defendants paid accrued vacation wages at the proper rate of pay to Vacation Wage Class members pursuant to Labor Code § 227.3; and
- ix. Whether Defendants paid all wages due to members of the Waiting Time Class at the time of separation of employment.

23. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual Class members. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each Class member, such as Defendants' timekeeping, payroll, overtime, wage statement, meal period, rest period, expense reimbursement, sick pay, vacation pay, and final wage policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

1 24. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the
3 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
4 alleged herein, Plaintiff, like the members of the Classes, was deprived of all earned overtime
5 wages, was not paid meal period premiums at the proper regular rate of compensation, was not
6 paid sick pay at the proper regular rate of pay, was subject to Defendants' uniform meal and rest
7 period policies/practices, was not paid his accrued but unused vacation wages at his final rate at
8 termination of employment, was furnished with inaccurate wage statements, and was deprived of
9 all final wages upon his separation of employment from Defendants.

10 25. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
11 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
12 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
13 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class
14 actions in state and federal courts in the past and are committed to vigorously prosecuting this
15 action on behalf of the members of the Classes.

16 26. **Superiority:** The California Labor Code is broadly remedial in nature and serves
17 an important public interest in establishing minimum working conditions and standards in
18 California. These laws and labor standards protect the average working employee from
19 exploitation by employers who have the responsibility to follow the laws and who may seek to
20 take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment. The nature of this action and the format of laws available to Plaintiff
22 and members of the Classes make the class action format a particularly efficient and appropriate
23 procedure to redress the violations alleged herein. If each employee were required to file an
24 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
25 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
26 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
27 an individual remedy would discourage the assertion of lawful claims by employees who would
28 be disinclined to file an action against their former and/or current employer for real and justifiable

1 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
2 prosecution of separate actions by individual class members would create a substantial risk of
3 inconsistent or varying verdicts or adjudications with respect to the individual class members
4 against Defendants herein; and which would establish potentially incompatible standards of
5 conduct for Defendants. Further, the claims of the individual members of the Classes are not
6 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
7 costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are
8 maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME WAGES**

11 **(AGAINST ALL DEFENDANTS)**

12 27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 28. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
14 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
15 overtime hours worked and provide a private right of action for the failure to pay all overtime
16 compensation for overtime work performed.

17 29. At all times relevant herein, Defendants were required to properly compensate
18 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
19 Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an
20 employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess
21 of 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours
22 on the seventh consecutive workday in a workweek. Wage Order 7, § 3 also requires an employer
23 to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a
24 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.

25 30. As alleged herein, Defendants have caused Plaintiff and Overtime Class members
26 to work overtime and/or double-time hours but have not compensated them at one and one-half
27 times (or two times) their regular rate of pay for such hours.

28 31. The foregoing policies and practices are unlawful and create entitlement to

1 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
2 premiums owing, including interest thereon, statutory penalties, and attorneys' fees and costs of
3 suit according to California Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of
4 Civil Procedure § 1021.5.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MEAL PERIOD PREMIUM WAGES AT REGULAR RATE OF**
7 **COMPENSATION**
8 **(AGAINST ALL DEFENDANTS)**

9 32. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 33. At all relevant times, Defendants have been required to pay meal period premiums
11 at employees' "regular rate of compensation" pursuant to Labor Code § 226.7 when a legally
12 compliant meal period is not provided. "Regular rate of compensation" is synonymous with
13 "regular of pay" as used in Labor Code § 510. Thus, meal period premiums must be calculated in
14 the same manner as the "regular rate of pay" is calculated for overtime purposes, and must
15 incorporate the value of Incentive Pay.

16 34. As alleged herein, Defendants failed to incorporate the value of Incentive Pay
17 when calculating meal period premiums for Plaintiff and members of the Meal Period Premium
18 Underpayment Class, and thus underpaid Plaintiff and members of the Meal Period Premium
19 Underpayment Class for their meal period premium wages due under Labor Code § 226.7.

20 35. As also alleged herein, Defendants have also paid meal period premiums to
21 members of the Meal Period Premium Underpayment Class at rates lower than even employees'
22 *base* rate of pay, in further violation of Labor Code § 226.7.

23 36. As a result of the foregoing, Plaintiff and members of the Meal Period Premium
24 Underpayment Class are entitled to the amount of underpayment of meal period premium wages,
25 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
26 Code §§ 226.7, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of
27 the California Constitution.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

37. Plaintiff re-alleges and incorporate by reference all previous paragraphs.

38. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all their hourly non-exempt employees, including Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, and have failed to pay meal period premiums at Plaintiff's and Meal Period Class members' regular rate of compensation as required under Labor Code § 226.7, for the reasons set forth in this Complaint.

39. As a result, Defendants owe premium compensation for meal period violations, including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 7, Labor Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Labor Code §§ 226.7 and 516, and Wage Order 7, § 12 establish the right of employees to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As alleged herein, Defendants have failed to authorize and permit Plaintiff and Rest Period Class members to take their legally entitled rest periods. Defendants also failed to compensate Plaintiff and Rest Period Class members with a rest period premium for each rest period to which they were entitled while working.

42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest Period Class members in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, § 1 of the California Constitution.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages earned, all meal and rest period premium wages earned, total hours worked, each hourly rate in effect during the pay period, and the number of hours worked at each hourly rate, in violation of Labor Code § 226.

45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their earned overtime wages, and deprived them of the information necessary to identify and reconcile the discrepancies in Defendants' reported data.

46. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs of suit, pursuant to Labor Code §§ 226 and 226.3.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(AGAINST ALL DEFENDANTS)

47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee, or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

1 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
3 at their separation from employment, including (but not limited to) unpaid overtime wages, and
4 unpaid meal and rest period premium wages.

5 50. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
6 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
7 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
8 to the requirements of Labor Code §§ 201-203.

9 51. Defendants' failure to pay all final wages was willful within the meaning of Labor
10 Code § 203. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class members
11 their earned wages upon separation from employment results in a continued payment of daily
12 wages up to thirty days from when the wages were due. Plaintiff and Waiting Time Class members
13 are entitled to compensation per Labor Code § 203, plus reasonable attorneys' fees and costs.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO PAY VACATION WAGES AT PROPER RATE UPON TERMINATION**
16 **(AGAINST ALL DEFENDANTS)**

17 52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 53. Defendants are required to pay all accrued but unused vacation wages to
19 employees upon termination of employment, as required under Labor Code §§ 203 and 227.3. As
20 alleged herein, Defendants have failed to pay Plaintiff and members of the Vacation Wage Class
21 all accrued but unused vacation wages at the termination of their employment at their "final rate"
22 of pay, in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, 31 Cal.3d 774
23 (1982).

24 54. As a result of the foregoing, Plaintiff and members of Vacation Wage Class are
25 entitled to recover the amount of underpaid vacation wages, interest thereon, and attorneys' fees
26 and costs, pursuant to Labor Code §§ 201-203, 227.3, 218.6 and Code of Civil Procedure §
27 1021.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 **(AGAINST ALL DEFENDANTS)**

4 55. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 56. At all relevant times, Defendants were subject to Labor Code § 2802, which states
6 that “an employer shall indemnify his or her employees for all necessary expenditures or losses
7 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
8 her obedience to the directions of the employer.”

9 57. At all relevant times, Defendants were subject to Labor Code § 2804, which states,
10 “any contract or agreement, express or implied, made by any employee to waive the benefits of
11 this article or any part thereof, is null and void, and this article shall not deprive any employee or
12 his personal representative of any right or remedy to which he is entitled under the laws of this
13 State.”

14 58. Due to Defendants’ unlawful policy and practice of requiring employees to use
15 their personal cellular phones or other devices with calculators for work purposes, and their failure
16 to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have
17 violated Labor Code § 2802.

18 59. As a proximate result of Defendants’ policies and/or practices in violation of Labor
19 Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class suffered
20 damages in sums, which will be shown according to proof.

21 60. Plaintiff and members of the Expense Reimbursement Class are entitled to
22 attorneys’ fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

23 61. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of
24 necessary expenditures carries interest at the same rate as judgments in civil actions. Thus,
25 Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall
26 accrue from the date on which they incurred the initial necessary expenditure.

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1 **NINTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(AGAINST ALL DEFENDANTS)**

4 62. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 63. Defendants have engaged, and continue to engage, in unfair and/or unlawful
6 business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay
7 Plaintiff and the Classes all earned overtime wages due, failing to provide meal periods or
8 properly pay meal period premium wages, failing to authorize and permit rest periods or pay rest
9 period premium wages, failing to furnish accurate and complete itemized wage statements, failing
10 to reimburse business expenses, failing to pay all earned wages at separation of employment,
11 failing to pay vacation wages at the proper rate of pay, and failing to pay sick pay at the proper
12 rate of pay.

13 64. Defendants' utilization of these unfair and/or unlawful business practices has
14 deprived Plaintiff and members of the Classes of compensation to which they are legally entitled,
15 constitutes unfair and/or unlawful competition, and provides an unfair advantage over
16 Defendants' competitors who have been and/or are currently employing workers and attempting
17 to do so in honest compliance with applicable wage and hour laws.

18 65. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
19 herein, Plaintiff for himself, and on behalf of the members of the Classes, seeks full restitution of
20 monies as necessary and according to proof, to restore all monies withheld, acquired, and/or
21 converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

22 66. The acts complained of herein occurred within the four years immediately
23 preceding the filing of this action.

24 67. Plaintiff was compelled to retain the services of counsel to file this court action to
25 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
26 of Defendants' current non-exempt employees, and to enforce important rights affecting the
27 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
28 which he is entitled to recover under Code of Civil Procedure § 1021.5.

TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

68. Plaintiff re-alleges and incorporates by reference all previous paragraphs. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.* Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay meal period premiums to Plaintiff and other aggrieved employees at the “regular rate of compensation,” in violation of Labor Code § 226.7;
- c. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to authorize and permit all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with accurate and complete itemized wage statements, in violation Labor Code §§ 226 and 1198;
- f. Failing to pay all wages owed to Plaintiff and other aggrieved former employees at their separation of employment, in violation of Labor Code §§ 201-203;
- g. Failing to pay vacation wages owed to Plaintiff and other aggrieved former employees at the proper rate of pay at their separation of employment, in violation of Labor Code §§ 201-203 and 227.3;
- h. Failing to pay sick pay wages to Plaintiff and other aggrieved employees at the regular rate of pay, in violation of Labor Code § 246;
- i. Failing to reimburse Plaintiff and other aggrieved employees for all work-related expenses, in violation of Labor Code §§ 2802, 2804, and 1198; and
- j. Failing to maintain accurate records with regard to Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

69. On December 29, 2022, Plaintiff notified Defendant UFP Thornton LLC, via certified mail, and the Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the Labor Code and Plaintiff's intent to bring a claim for civil penalties under PAGA with respect to the violations of the Labor Code identified in paragraph 68 (a)-(j) above. Now that sixty-five days have passed from Plaintiff's notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

70. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

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1 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
2 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
3 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
4 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
5 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
6 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
7 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
8 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
9 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
10 Labor Code § 2699(f);

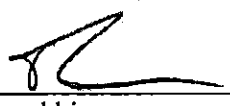
11 14. Prejudgment interest on all due and unpaid wages and other damages pursuant to
12 California Labor Code §§ 218.6, 1194(a), 2802(b), Civil Code § 3287; and Art. XV, § 1 of the
13 California Constitution;

14 15. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
15 226(e), 1194 *et seq.*, 2802(c), 2699(g), Code of Civil Procedure § 1021.5, and all other applicable
16 statutes; and

17 16. For such other and further relief the Court may deem just and proper.

18
19 Date: March 6, 2023 Respectfully submitted,
ABRAMSON LABOR GROUP

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21 By:

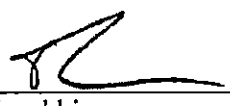

Tuvia Korobkin
Attorneys for Plaintiff

22
23 **DEMAND FOR JURY TRIAL**

24 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

25
26 Dated: March 6, 2023 Respectfully submitted,
ABRAMSON LABOR GROUP

27
28 By:


Tuvia Korobkin
Attorneys for Plaintiff