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Case #23CV413857
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12
13

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA
12 UNLIMITED JURISDICTION
13

14 JONATHAN PINEDO, on behalf of himself
15 and all others similarly situated.

16 *Plaintiff,*

17 v.

18 EXPRESS FREIGHT HANDLERS, INC., a
19 New York corporation; and DOES 1 through
20 50, inclusive,

21 *Defendants.*
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Case No. 23CV413857

Assigned For All Purposes To The
Hon. Theodore C. Zayner, Department 19

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, 1197.1 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 JONATHAN PINEDO (“Plaintiff”), on behalf of himself and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against defendants EXPRESS FREIGHT
5 HANDLERS, INC., a New York corporation; and DOES 1 through 50, inclusive, (collectively
6 referred to as “Defendants”) for alleged violations of the Labor Code. As set forth below, Plaintiff
7 alleges that Defendants have

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

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

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

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

13 (5) failed to pay them overtime wages at the correct rate;

14 (6) failed to pay them double time wages at the correct rate;

15 (7) failed to pay them overtime and/or double time wages;

16 (8) failed to pay them for all vested vacation pay;

17 (9) failed to reimburse them for all necessary business expenses;

18 (10) failed to provide them with accurate written wage statements; and

19 (11) failed to pay them all of their final wages following separation of employment.

20 Based on these alleged violations, Plaintiff now brings this class action to recover unpaid
21 wages, restitution, statutory penalties, and related relief on behalf of himself and all others similarly
22 situated.

23 **JURISDICTION AND VENUE**

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

27 3. Venue is proper in the County of Santa Clara because Defendants’ principal place
28 of business is in New York, is incorporated under the laws of New York, does business in the

1 County of Santa Clara, and has not registered a California place of business with the California
2 Secretary of State. As such, venue is proper in any county in California.

3 **PARTIES**

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

6 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant EXPRESS
7 FREIGHT HANDLERS, INC. is, and at all relevant times mentioned herein was, a New York
8 Corporation doing business in the State of California.

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

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

23 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Whether Defendants maintained a policy or practice of failing to provide employees

- 1 with their meal periods;
- 2 ii. Whether Defendants maintained a policy or practice of failing to provide employees
- 3 with their rest periods;
- 4 iii. Whether Defendants failed to pay premium wages to class members when they have
- 5 not been provided with required meal and/or rest periods;
- 6 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 7 as a result of policies that fail to provide meal periods in accordance with California
- 8 law;
- 9 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 10 for all time worked;
- 11 vi. Whether Defendants failed to provide proportionate accruals for vested vacation time
- 12 for class members as required by California law;
- 13 vii. Whether Defendants subjected the vacation time and/or floating holidays they offer
- 14 to class members to forfeiture;
- 15 viii. Whether Defendants failed to reimburse class members for all necessary business
- 16 expenses incurred during the discharge of their duties;
- 17 ix. Whether Defendants failed to provide class members with accurate written wage
- 18 statements as a result of providing them with written wage statements with
- 19 inaccurate entries for, among other things, amounts of gross and net wages, and total
- 20 hours worked;
- 21 x. Whether Defendants applied policies or practices that result in late and/or incomplete
- 22 final wage payments;
- 23 xi. Whether Defendants are liable to class members for waiting time penalties under
- 24 Labor Code section 203;
- 25 xii. Whether class members are entitled to restitution of money or property that
- 26 Defendants may have acquired from them through unfair competition;
- 27 13. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff
- 28 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing

1 to comply with the Labor Code and Business and Professions Code as alleged in this Complaint.

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

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

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

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

21 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
22 approximately June 2020 through January 14, 2023.

23 **COVID Screening and Off-the-Clock**

24 18. Defendants required Plaintiff and the putative class to fill out a worksheet when
25 entering the warehouse to begin their shifts. The worksheet asked a series of questions to verify
26 that employees were neither symptomatic of nor recently exposed to COVID-19.

27 19. Defendants required employees fill this out before clocking in for the day. The
28 worksheet took about five minutes to fill out – time for which Defendants did not pay Plaintiff or

1 the putative class.

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

5 **Missed Meal Periods**

6 21. Plaintiff and the putative class were not provided with meal periods of at least thirty
7 (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling
8 each meal period as part of each work shift; (2) chronically understaffing each work shift with not
9 enough workers; and (3) imposing so much work on each employee such that it made it unlikely
10 that an employee would be able to take their breaks if they wanted to finish their work on time.

11 22. When Plaintiff and the putative class were able to take meal breaks, they were
12 almost always interrupted, shortened, or after the fifth hour of work because Defendants required
13 them to get more work done rather than take their full meal and rest periods.

14 23. Further, on shifts of ten hours or more, Defendants never gave Plaintiff or the
15 putative class members a second meal period.

16 24. Plaintiff and the putative class period did not sign any meal period waivers, and did
17 not receive meal period premiums for missed, shortened, or late meal periods.

18 25. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
19 provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours
20 worked due to complying with Defendants' productivity requirements that required Plaintiff and
21 the putative class to work through their meal periods in order to complete their assignments on
22 time.

23 **Missed Rest Periods**

24 26. Plaintiff and the putative class were not provided with rest periods of at least ten
25 (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants'
26 policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing
27 each work shift with not enough workers; and (3) imposing so much work on each employee such
28 that it made it unlikely that an employee would be able to take their breaks if they wanted to finish

1 their work on time.

2 27. Defendants failed to provide Plaintiff and the putative class with paid, off-duty rest
3 periods of at least ten minutes for every four hours worked. Specifically, Defendants gave Plaintiff
4 and the putative class so much work that they could not reasonably both complete their work and
5 take rest breaks in accordance with the law. Nearly every day, Plaintiff's and the putative class'
6 rest breaks were cut short, interrupted, and/or after the fourth hour of work.

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

11 **Vacation Pay**

12 29. Plaintiff and the putative class accrued vacation wages during their employment with
13 Defendants.

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

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

21 32. Plaintiff and the putative class are entitled to vacation accrued during their
22 employment with Defendants. Upon termination, Plaintiff and the putative class were not paid all
23 accrued vacation pay.

24 **Overtime and Double Time Pay**

25 33. Defendants had a policy and/or practice of failing to pay Plaintiff and the putative
26 class members their earned overtime and double time wages. Plaintiff is informed and believes
27 that when paying out employees' work beyond eight hours in a day or forty hours in a week,
28 Defendants regularly failed to pay the statutorily required time-and-a-half pay.

34. Additionally, Plaintiff and the putative class members regularly worked shifts over twelve hours, but Defendants failed to consistently pay out double-time pay for these shifts.

35. During the applicable limitations period, Defendants violated the rights of Plaintiff and the putative class under the above-referenced Labor Code sections by failing to pay them overtime wages for all overtime hours worked in violation of Labor Code sections 510, 1194, and 1198.

Expense Reimbursement

36. Plaintiff and the putative class members were required to utilize their own personal cell phones to perform their job duties like verifying incoming check numbers with corporate or communicating about work duties with managers and coworkers.

37. Plaintiff and the putative class members were not reimbursed for business expenses incurred in having and using cell phones.

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

Wage Statements

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

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

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

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

43. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each

hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

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

(Plaintiff and Meal Period Sub-Class)

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

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

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

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

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

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

50. Section 11 of the applicable Wage Order states:

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

1 meal period shall be considered an 'on duty' meal period and counted as time
2 worked. An 'on duty' meal period shall be permitted only when the nature of
3 the work prevents an employee from being relieved of all duty and when by
4 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."

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

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

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

16 54. Plaintiff alleges that, at all relevant times during the applicable limitations period,
17 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal**
18 **Period Sub-Class** with a second meal period when they worked shifts of ten or more hours and
19 failed to pay them premium wages as required by Labor Code section 512 and the applicable Wage
20 Order.

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

24 56. Pursuant to Labor Code sections 204, 218.6 and 226.7, Plaintiff, on behalf of himself
25 and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon,
26 and costs of suit.

27 57. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
28 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and

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

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS**

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

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

6 58. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

18 62. Compensation for missed rest periods constitutes wages within the meaning of Labor
19 Code section 200.

20 63. Labor Code section 1198 makes it unlawful to employ a person under conditions that
21 violate the Wage Order.

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

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

28 66. Pursuant to Labor Code sections 204, 218.6 and 226.7, Plaintiff, on behalf of himself

1 and **Rest Period Sub-Class** members, seeks to recover unpaid premium wages, interest thereon,
2 and costs of suit.

3 67. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
4 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
5 **Rest Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

6 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

20 72. Labor Code section 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum or overtime wage required under the applicable Wage
22 Order.

23 73. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
24 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in
25 addition to the underlying unpaid minimum wages and interest thereon.

26 74. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
27 than the minimum wage required under the applicable Wage Order for all hours worked during a
28 payroll period.

1 75. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
2 person acting either individually or as an officer, agent, or employee of another person to pay an
3 employee, or cause an employee to be paid, less than the applicable minimum wage.

4 76. Labor Code section 1198 makes it unlawful for employers to employ employees
5 under conditions that violate the applicable Wage Order.

6 77. Labor Code section 204 requires employers to pay non-exempt employees their
7 earned wages for the normal work period at least twice during each calendar month on days the
8 employer designates in advance and to pay non-exempt employees their earned wages for labor
9 performed in excess of the normal work period by no later than the next regular payday.

10 78. Labor Code section 223 makes it unlawful for employers to pay their employees
11 lower wages than required by contract or statute while purporting to pay them legal wages.

12 79. Labor Code section 510 and section 3 of the applicable Wage Order require
13 employers to pay non-exempt employees overtime wages of no less than one and one-half times the
14 employees' respective regular rates of pay for all hours worked in excess of eight hours in one
15 workday, all hours worked in excess of forty hours in one workweek, and for the first eight hours
16 worked on the seventh consecutive day of one workweek.

17 80. Labor Code section 510 and section 3 of the applicable Wage Order also require
18 employers to pay non-exempt employees overtime wages of no less than two times the employees'
19 respective regular rates of pay for all hours worked in excess of twelve hours in one workday and
20 for all hours worked in excess of eight hours on a seventh consecutive workday during the
21 workweek.

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

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

28 83. During the relevant time period, Defendants failed to pay Plaintiff and **Hourly**

1 **Employee Class** members all earned wages every pay period at the correct rates, including
2 overtime rates, because Defendants directed, permitted, or otherwise encouraged Plaintiff and
3 **Hourly Employee Class** members to perform off-the-clock work.

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

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

11 86. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
12 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
13 **Hourly Employee Class** members, seeks to recover reasonable attorneys' fees.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PAY VACATION WAGES**

16 **(Lab. Code § 227.3)**

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

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

19 88. California Labor Code section 227.3 provides:

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

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

27 90. As a result of Defendants' reimbursement policies and practices, Plaintiff is
28 informed and believes and thereon alleges that Defendants failed to reimburse him and **Vacation**

1 **Pay Class** members for all accrued vacation wages.

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

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

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO INDEMNIFY**

11 **(Lab. Code § 2802)**

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

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

14 94. Labor Code section 2802(a) states:

15 An employer shall indemnify his or her employee for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her
17 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.

18 95. At all relevant times during the applicable limitations period, Plaintiff and the
19 **Expense Reimbursement Class** members incurred necessary business-related expenses and costs,
20 including but not limited to, cell phone usage and cell data plans.

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

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

27 98. At all relevant times during the applicable limitations period, Defendants required
28 Plaintiff and the **Expense Reimbursement Class** members to pay for expenses and/or losses caused

1 by Defendants' want of ordinary care. Defendants failed to indemnify Plaintiff and **Expense**
2 **Reimbursement Class** members for all such expenditures.

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

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

9 101. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
10 interest thereon and costs pursuant to Labor Code section 218.6 and reasonable attorneys' fees
11 pursuant to Code of Civil Procedure section 1021.5.

12 SIXTH CAUSE OF ACTION

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

14 **(Lab. Code § 226)**

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

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

17 103. Labor Code section 226(a) states:

18 An employer, semimonthly or at the time of each payment of wages, shall furnish to
19 his or her employee, either as a detachable part of the check, draft, or voucher paying
20 the employee's wages, or separately if wages are paid by personal check or cash, an
21 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
22 worked by the employee, except as provided in subdivision (j), (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
24 rate basis, (4) all deductions, provided that all deductions made on written orders of
25 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the
26 inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and only the last four digits of his or her social security number or an
28 employee identification number other than a social security number, (8) the name and
address of the legal entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of hours worked
at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a
temporary services employer as defined in Section 201.3, the rate of pay and the total
hours worked for each temporary services assignment. The deductions made from
payment of wages shall be recorded in ink or other indelible form, properly dated,
showing the month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at the place of

1 employment or at a central location within the State of California. For purposes of
2 this subdivision, 'copy' includes a duplicate of the itemized statement provided to an
3 employee or a computer-generated record that accurately shows all of the information
4 required by this subdivision.

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

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

15 106. Plaintiff is informed and believes that Defendants' failure to provide him and **Wage**
16 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
17 that Defendants had the ability to provide them with accurate wage statements but had intentionally
18 provided them with written wage statements that Defendants knew do not comply with Labor Code
19 section 226(a).

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

28 108. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
Statement Penalties Sub-Class members, seeks the greater of actual damages or fifty dollars

1 (\$50.00) for the initial pay period in which a violation of Labor Code section 226(a) occurred and
2 one hundred dollars (\$100.00) for each subsequent pay period in which a violation of Labor Code
3 section 226(a) occurred, not to exceed an aggregate penalty of four thousand dollars (\$4,000.00) per
4 class member.

5 109. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
6 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Wage Statement Penalties**
7 **Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

8 **SEVENTH CAUSE OF ACTION**

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

10 **(Lab. Code §§ 201–203)**

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

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

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

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

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

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(Plaintiff and UCL Class)

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

122. Business and Professions Code section 17200 defines “unfair competition” to include any unlawful business practice.

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

124. California law requires employers to pay hourly, non-exempt employees for all hours

1 they are permitted or suffered to work, including hours that the employer knows or reasonably
2 should know that employees have worked.

3 125. Plaintiff, on behalf of himself and the **UCL Class** members, re-alleges and
4 incorporates the FIRST, SECOND, THIRD, FOURTH, and FIFTH, causes of action herein.

5 126. Plaintiff lost money and/or property as a result of the aforementioned unfair
6 competition.

7 127. Defendants have or may have acquired money by means of unfair competition.

8 128. Plaintiff is informed and believes and thereupon alleges that, by committing the
9 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
10 226.6, 553, 1175, 1199 and 2802. Defendants thus committed misdemeanors by violating the Labor
11 Code as alleged herein.

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

17 130. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt
18 employees and entitled to the full protections of both the Labor Code and the applicable Wage
19 Order.

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

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

1 conduct.

2 133. Plaintiff is informed and believes that other similarly situated persons have been
3 subject to the same unlawful policies or practices of Defendants.

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

7 135. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
8 relief for "any unlawful, unfair or fraudulent business act or practice," including a practice or act
9 that violates, or is considered unlawful under, any other state or federal law.

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

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

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

24 **NINTH CAUSE OF ACTION**

25 **CIVIL PENALTIES**

26 **(Lab. Code §§ 2698 et seq.)**

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

28 140. During the applicable limitations period, Defendants have violated Labor Code

1 sections 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

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

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

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

13 144. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
14 penalties for Defendants’ violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
15 227.3, 510, 512, 1194, 1197, 1198 and 2802:

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

employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code section 210);

iv. For violations of Labor Code section 223, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code section 225.5);

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

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

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

(penalties set by Labor Code section 1197.1);

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

PRAYER FOR RELIEF

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

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

DEMAND FOR JURY TRIAL

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

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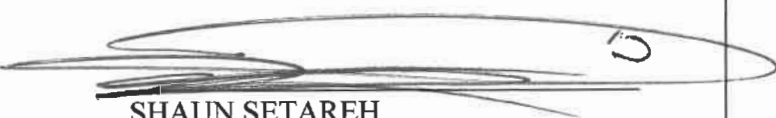
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1 DATED: December 12, 2023

SETAREH LAW GROUP

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3 
4 SHAUN SETAREH
5 WILLIAM M. PAO
6 Attorneys for Plaintiff
7 JONATHAN PINEDO
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On December 13, 2023, I served the foregoing documents described as:

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

[X] BY E-MAIL OR ELECTRONIC TRANSMISSION

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

Executed on December 13, 2023, at Beverly Hills, California.


Diana Maytorena