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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSIE LOPEZ, on behalf of himself and all
others similarly situated, and the general
public,

Plaintiff,

v.

WEST COAST ARBORISTS, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 2:23-cv-02734-WBS-DB

Amended Pursuant to the Court's February 1,
2024, Order

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 1194, 1194.2, 1197, 1197.1 and 1198);
2. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a);
3. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
4. Failure to Indemnify (Lab. Code § 2802);
5. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
6. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff JESSIE LOPEZ (“Plaintiff”), on behalf of himself, all others similarly situated, and
2 the State of California, the general public, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants WEST COAST
5 ARBORISTS, INC., a California corporation; and DOES 1 through 50, inclusive, (collectively
6 referred to as “Defendants”) for alleged violations of the California Labor Code and California
7 Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 8 a. Failed to pay them minimum wages;
9 b. failed to provide them with accurate written wage statements;
10 c. failed to reimburse them with necessary business expenditures; and
11 d. failed to pay them all of their final wages following separation of employment.

12 Based on these alleged Labor Code violations, Plaintiff now brings this class and
13 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
14 restitution and related relief on behalf of himself, all others similarly situated, and the general public.

15 **JURISDICTION AND VENUE**

16 1. This matter was removed by Defendant to this Court from the Sacramento County
17 Superior Court. Plaintiff reserves the right to remand this matter back to the Superior Court.

18 **PARTIES**

19 2. Plaintiff JESSIE LOPEZ is, and at all relevant times mentioned herein, an individual
20 residing in the State of California.

21 3. Plaintiff is informed and believes, and thereupon alleges that Defendant WEST
22 COAST ARBORISTS, INC. is, and at all relevant times mentioned herein, a California corporation
23 doing business in the State of California.

24 4. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
25 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
26 will amend this Complaint to allege the true names and capacities of the DOE defendants when
27 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
28 named defendants are responsible in some manner for the occurrences, acts and omissions alleged

1 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
2 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
3 defendants when ascertained.

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

10 6. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
11 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
12 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
13 and omissions alleged herein.

14 7. This action has been brought and may be maintained as a class action pursuant to
15 F.R.C.P. Rule 23 because there is a well-defined community of interest among the persons who
16 comprise the readily ascertainable classes defined below and because Plaintiff is unaware of any
17 difficulties likely to be encountered in managing this case as a class action.

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

- 20 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
21 separately, and/or any staffing agencies and/or any other third parties in hourly or
22 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action ("Hourly Employee
Class").
- 23 b. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
24 separated from their employment with Defendants during the period beginning
25 three years before the filing of this action and ending when final judgment is
entered.
- 26 c. **Wage Statement Class:** All persons employed by Defendants in California during
27 the period beginning one year before the filing of this action and ending when final
judgment is entered.
- 28 d. **Expense Reimbursement Class:** All persons employed by Defendants in
California who incurred business expenses during the **Relevant Time Period**.

- 1
2 e. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class**
3 members employed by Defendants in California during the four years prior to the
filing of this action and ending on the date that final judgment is entered in this
action.

4 9. **Reservation of Rights:** Plaintiff reserves the right to amend or modify the class
5 definitions with greater specificity, by further division into sub-classes and/or by limitation to
6 particular issues.

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

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

- 14 a. Whether Defendants failed to pay minimum wages to class members for all time
15 worked;
16 b. Whether Defendants failed to provide class members with accurate written wage
17 statements as a result of providing them with written wage statements with
18 inaccurate entries for, among other things, amounts of gross and net wages, and
19 total hours worked;
20 c. Whether Defendants applied policies or practices that result in late and/or
21 incomplete final wage payments;
22 d. Whether Defendants failed to reimburse class members for all necessary business
23 expenses incurred during the discharge of their duties;
24 e. Whether Defendants are liable to class members for waiting time penalties under
25 Labor Code section 203; and
26 f. Whether class members are entitled to restitution of money or property that
27 Defendants may have acquired from them through unfair competition;

28 12. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff

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

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

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

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

22 **GENERAL ALLEGATIONS**

23 16. Plaintiff worked for Defendants as a non-exempt employee during the relevant and
24 statutory periods.

25 17. Defendants had a common policy and practice of systemically failing to pay Plaintiff
26 and Class members proper wages and overtime for all hours worked, at the proper rates of pay. First,
27 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
28 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay

1 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
2 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
3 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
4 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
5 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
6 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
7 them.

8 18. Next, Plaintiff and Class Members were also consistently required to perform work,
9 off-the-clock, for which they were not paid wages. Specifically, Plaintiff and Class Members were
10 systemically required to arrive early at the warehouse and wait until the manager arrived and opened
11 the parking lot gate for employees. Subsequently, Plaintiff and Class Members spent time putting on
12 work gear, including boots, and connecting the chipper or flatbed to the truck prior to driving to the
13 job site. The forgoing work duties were all performed off the clock, under the direction and control
14 of Defendants, for which no wages were paid.

15 19. Plaintiff and Class Members were not provided with accurate wage statements as
16 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
17 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
18 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
19 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in "ink
20 or other indelible form."

21 20. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
22 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

23 21. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
24 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
25 not included.

26 22. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
27 were not accurately reflected in that: all hours worked, including overtime, were not included.

28 23. Defendants failed to comply with Labor Code section 226(a)(9) as "all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
3 overtime, were not included.

4 24. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay
5 stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
6 Plaintiff’s and Class Members’ wage statement were only provided in electronic format in violation
7 of Labor Code § 226.

8 25. Plaintiff and Class Members were not reimbursed for business expenses incurred in
9 executing their duties under Defendant’s employ. Specifically, Plaintiff and Class Members were
10 required to pay the costs of maintaining and cleaning their company uniform necessary to perform
11 their duties under Defendants’ employ. Plaintiff and Class members were not reimbursed for these
12 necessary work-related expenses.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM HOURLY WAGES**

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

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

17 26. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

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

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

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

28 30. Labor Code section 1194 invalidates any agreement between an employer and an

1 employee to work for less than the minimum or overtime wage required under the applicable Wage
2 Order.

3 31. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
4 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
5 to the underlying unpaid minimum wages and interest thereon.

6 32. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
7 than the minimum wage required under the applicable Wage Order for all hours worked during a
8 payroll period.

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

12 34. Labor Code section 1198 makes it unlawful for employers to employ employees under
13 conditions that violate the applicable Wage Order.

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

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

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

23 38. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
24 **Employee Class** members for all time worked.

25 39. Plaintiff and **Hourly Employee Class** members were not paid proper minimum wages
26 for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful time-
27 rounding policy and practice which rounded down and reduced the actual working hours recorded by
28 Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and generally did so to

1 the detriment of the Plaintiff and **Hourly Employee Class**, and these unlawfully rounded time entries
2 were inputted into Defendants' payroll system from which wage statements and payroll checks were
3 created. Defendants did so with the ostensible intent of paying Plaintiff and **Hourly Employee Class**
4 members only for the hours they were scheduled to work, rather than the hours they were actually
5 under Defendants' control. Plaintiff contends this policy is not neutral and results, over time, to the
6 detriment of the Plaintiff and **Hourly Employee Class** members by systematically
7 undercompensating them.

8 40. Plaintiff and **Hourly Employee Class** members were consistently required to perform
9 work, off-the-clock for which they were not paid wages. Specifically, Plaintiff and **Hourly Employee**
10 **Class** members were systemically required to arrive early at the warehouse and wait until the manager
11 arrived and opened the parking lot gate for employees. Subsequently, Plaintiff and **Hourly Employee**
12 **Class** members spent time putting on work gear, including boots, and connecting the chipper or
13 flatbed to the truck prior to driving to the job site.

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

18 42. Pursuant to Labor Code sections 204, 218.6, 223, 1194 and 1194.2, Plaintiff, on behalf
19 of himself and **Hourly Employee Class** members, seek to recover unpaid wages, interest thereon and
20 costs of suit.

21 43. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
22 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
23 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

24 **SECOND CAUSE OF ACTION**

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

26 **(Lab. Code § 226)**

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

28 44. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged

herein.

45. Labor Code section 226(a) states:

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

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

47. Plaintiff is informed and believes that, at all relevant times during the applicable limitations period, Defendants have failed to provide **Wage Statement Class** members with written wage statements as described above. Additionally, the wage statements issued to class members failed to account for the unpaid minimum wages wages described above.

48. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class** Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only provided in electronic format in violation of Labor Code § 226.

49. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage Statement Class** members with accurate written wage statements were intentional in that Defendants have the ability to provide them with accurate wage statements but have intentionally provided them with written wage statements that Defendants have known do not comply with Labor Code section 226(a).

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

51. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL FINAL WAGES

(Lab. Code §§ 201-203)

(Plaintiff and Waiting Time Penalties Sub-Class)

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

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

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

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

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

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

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

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

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

27 ///

28 ///

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(Plaintiff and Reimbursement Class)

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

62. Labor Code section 2802(a) states:

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

63. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff and **Expense Reimbursement Class Members** were required to pay the costs of maintaining and cleaning their uniforms necessary to perform their duties under Defendants' employ. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for these necessary work-related expenses.

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

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

FIFTH CAUSE OF ACTION

UNFAIR COMPETITION

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

(Plaintiff and UCL Class)

66. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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

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

7 69. California law requires employers to pay hourly, non-exempt employees for all hours
8 they are permitted or suffered to work, including hours that the employer knows or reasonable should
9 know that employees have worked.

10 70. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST and
11 FOURTH causes of action herein.

12 71. Plaintiff lost money or property as a result of the aforementioned unfair competition.

13 72. Defendants have or may have acquired money by means of unfair competition.

14 73. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
15 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
16 226.6, 354, 408, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 as well as
17 applicable Wag Orders, which make it a misdemeanor to commit the violations alleged herein.

18 74. Defendants have committed criminal conduct through their policies and practices of,
19 *inter alia*, failing to comport with their affirmative obligations as an employer to pay for all hours
20 worked at the proper rates of pay and reimbursement for necessary business expenditures.

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

27 76. As a result of Defendants’ violations of the Labor Code during the applicable
28 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form

1 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

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

4 78. 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 in
6 the State of California that comply with their legal obligations.

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

10 80. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
11 Plaintiffs request 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 Wage Orders.

14 81. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
15 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
16 Defendants, and each of them, and their agents and employees, from further violations of the Labor
17 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
18 order permanently enjoining Defendants, and each of them, and their respective agents and
19 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
20 Wage Orders.

21 82. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
22 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
23 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
24 and unfair business practices.

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

28 84. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of

1 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
2 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
3 and unfair business practices.

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

7 **SIXTH CAUSE OF ACTION**

8 **CIVIL PENALTIES**

9 **(Lab. Code §§ 2698, *et seq.*)**

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

11 87. During the applicable limitations period, Defendants have violated Labor Code §§
12 201, 202, 203, 210, 226, 226.3, 226.8, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197,
13 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

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

18 89. Plaintiff, a former employee against whom Defendants committed one or more of the
19 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
20 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
21 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
22 Defendants within the state of California from one year prior to the date of this letter and continuing
23 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
24 "Aggrieved Employees")

25 _____
26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants' violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

1 90. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
2 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
3 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
4 investigate.

5 91. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
6 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 223, 226(a), 226.8, 1174, 1194,
7 1194.2, 1197, 1197.1, 1198, and 2802:

- 8 i. For violations of Labor Code §§ 201, 202, 203, 1174, 1194, 1198 and 2802,
9 one hundred dollars (\$100) for each employee per pay period for each initial
10 violation and two hundred dollars (\$200) for each employee per pay period for
11 each subsequent violation (penalties set by Labor Code § 2699(f)(2));
- 12 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
13 (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 14 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
15 employee for each initial violation that was neither willful nor intentional, two
16 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
17 withheld from each employee, for each initial violation that was either willful
18 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
19 five percent (25%) of the amount unlawfully withheld from each employee,
20 for each subsequent violation, regardless of whether the subsequent violation
21 was either willful or intentional (penalties set by Labor Code § 210);
- 22 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
23 employee for each initial violation that was neither willful nor intentional, two
24 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
25 the amount unlawfully withheld from each employee, for each initial violation
26 that was either willful or intentional, and two hundred dollars (\$200) for each
27 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
28 from each employee, for each subsequent violation, regardless of whether the

subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

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

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

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

PRAYER FOR RELIEF

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

- a. An order that the action be certified as a class action;
- b. An order that Plaintiff be appointed class representative;
- c. An order that counsel for Plaintiff be appointed class counsel;
- d. Unpaid wages;
- e. Actual damages;
- f. Liquidated damages;
- g. Unreimbursed expenses;
- h. Restitution;
- i. Declaratory relief;

- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Civil penalties;
- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

Dated: February 12, 2024

D.LAW, INC.

/s/ David Keledjian

Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
JESSIE LOPEZ and the putative class

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.

Dated: February 12, 2024

D.LAW, INC.

/s/ David Keledjian

Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
JESSIE LOPEZ , and the putative class