

D.LAW, INC.
Emil Davtyan (SBN 299363)
emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
David Keledjian (SBN 309135)
d.keledjian@d.law
Kevin Burns (SBN 352713)
k.burns@d.law
880 E. Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Facsimile: (818) 962-6469

Attorneys for Plaintiffs BRANDON HOLLIFIELD and NATALIA SPORNIK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRANDON HOLLIFIELD, on behalf of
himself and all others similarly situated, and
the general public,

Plaintiffs,

v.

U.S. BORAX, INC., a Delaware corporation;
RIO TINTO SERVICES, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 2:24-CV-00228-JLS-MAA

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

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION 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 and (Lab. Code §§ 223, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiffs BRANDON HOLLIFIELD and NATALIA SPORNIK (collectively “Plaintiffs”),
2 on behalf of themselves, all others similarly situated, the State of California, and the general public,
3 complain and allege as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class and representative action against Defendants U.S. BORAX,
6 INC., a Delaware corporation; RIO TINTO SERVICES, INC., a Delaware corporation; and DOES 1
7 through 50, inclusive, (collectively referred to as “Defendants”) for alleged violations of the
8 California Labor Code and California Business and Professions Code. As set forth below, Plaintiffs
9 allege that Defendants have:

- 10 a. failed to pay them minimum wages;
- 11 b. failed to provide them with meal periods;
- 12 c. failed to provide them with rest periods;
- 13 d. failed to pay them premium wages for missed meal and rest periods;
- 14 e. failed to provide them with accurate written wage statements;
- 15 f. failed to reimburse them with necessary business expenditures;
- 16 g. failed to pay them all their final wages following separation of employment.

17 Based on these alleged Labor Code violations, Plaintiffs now bring this class and
18 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
19 restitution, and related relief on behalf of themselves, all others similarly situated, and the general
20 public.

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
23 (“CAFA”). See Defendants’ Notice of Removal (28 U.S.C. Section 1332, 1441, and 1446). See ECF
24 Document 1.

25 **PARTIES**

26 3. Plaintiff BRANDON HOLLIFIELD is, and at all relevant times mentioned herein, an
27 individual residing in the State of California.

28 4. Plaintiff NATALIA SPORNIK is, and at all relevant times mentioned herein, an

1 individual residing in the State of California.

2 5. Plaintiffs are informed and believe, and thereupon allege that Defendant U.S.
3 BORAX, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing business
4 in the State of California.

5 6. Plaintiffs are informed and believe, and thereupon allege that Defendant RIO TINO
6 SERVICES, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
7 business in the State of California.

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

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

22 9. Plaintiffs are informed and believe, and thereupon allege that, at all relevant times
23 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
24 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
25 and omissions alleged herein.

26 10. This action has been brought and may be maintained as a class action pursuant to
27 Federal Rules of Civil Procedure, Rule 23, because there is a well-defined community of interest
28 among the persons who comprise the readily ascertainable classes defined below and because

1 Plaintiffs are unaware of any difficulties likely to be encountered in managing this case as a class
2 action.

3 11. **Relevant Time Period:** The relevant time period is defined as the time period
4 beginning on January 1, 2022 to the filing of this action until judgment is entered.

- 5 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
6 separately, and/or any staffing agencies and/or any other third parties in hourly or
7 non-exempt positions in California four years prior to the filing of this action and
8 ending on the date that final judgment is entered in this action (“Hourly Employee
9 Class”).
- 10 b. **Meal Period Sub-Class:** All non-union **Hourly Employee Class** members who
11 worked in a shift in excess of five hours during the four years prior to the filing of
12 this action and ending on the date that final judgment is entered in this action.
- 13 c. **Rest Period Sub-Class:** All non-union **Hourly Employee Class** members who
14 worked a shift of at least three and one-half (3.5) hours the four years prior to the
15 filing of this action and ending on the date that final judgment is entered in this
16 action.
- 17 d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
18 separated from their employment with Defendants during the period beginning
19 three years before the filing of this action and ending when final judgment is
20 entered.
- 21 e. **Wage Statement Class:** All persons employed by Defendants in California during
22 the period beginning one year before the filing of this action and ending when final
23 judgment is entered.
- 24 f. **Expense Reimbursement Class:** All persons employed by Defendants in
25 California who incurred business expenses during the **Relevant Time Period**.
- 26 g. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class**
27 members employed by Defendants in California during the four years prior to the
28 filing of this action and ending on the date that final judgment is entered in this
action.

12. **Reservation of Rights:** Pursuant to Rule 23(c) of the Federal Rules of Civil
Procedure, Plaintiffs reserve 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.

13. **Numerosity:** The class members are so numerous that the individual joinder of each
individual class member is impractical. While Plaintiffs do not currently know the exact number of
class members, Plaintiffs are informed and believe, and thereupon allege that the actual number
exceeds the minimum required for numerosity under federal law.

///

1 14. **Commonality and Predominance:** Common questions of law and fact exist as to all
 2 class members and predominate over any questions which affect only individual class members.

3 These common questions include, but are not limited to:

- 4 a. Whether Defendants maintained a policy or practice of failing to provide non-
 5 union employees with their rest periods;
- 6 b. Whether Defendants maintained a policy or practice of failing to provide non-
 7 union employees with their meal periods;
- 8 c. Whether Defendants failed to pay premium wages to non-union class members
 9 when they have not been provided with meal and rest periods at the appropriate
 10 rates of pay;
- 11 d. Whether Defendants failed to pay minimum wages to class members for all time
 12 worked;
- 13 e. Whether Defendants failed to provide class members with accurate written wage
 14 statements as a result of providing them with written wage statements with
 15 inaccurate entries for, among other things, amounts of gross and net wages, and
 16 total hours worked;
- 17 f. Whether Defendants applied policies or practices that result in late and/or
 18 incomplete final wage payments;
- 19 g. Whether Defendants failed to reimburse class members for all necessary business
 20 expenses incurred during the discharge of their duties;
- 21 h. Whether Defendants are liable to class members for waiting time penalties under
 22 Labor Code section 203; and
- 23 i. Whether class members are entitled to restitution of money or property that
 24 Defendants may have acquired from them through unfair competition;

25 15. **Typicality:** Plaintiffs' claims are typical of the other class members' claims.
 26 Plaintiffs are informed and believe, and thereupon allege that Defendants have a policy or practice of
 27 failing to comply with the California Labor Code and Business and Professions Code as alleged in
 28 this Complaint.

1 16. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives and
2 have no interests that are adverse to, or otherwise conflict with, the interests of absent class members
3 and are dedicated to vigorously prosecuting this action on their behalf. Plaintiffs will fairly and
4 adequately represent and protect the interests of the other class members.

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

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

19 **GENERAL ALLEGATIONS**

20 19. Plaintiffs worked for Defendants as non-exempt employees during the relevant and
21 statutory periods.

22 20. Defendants misclassified Plaintiffs and other Class Members as exempt employees in
23 violation of Labor Code Section 515 as they were primarily engaged in non-exempt hourly work
24 under Defendants' employ.

25 21. Defendants had a common policy and practice of systemically failing to pay Plaintiffs
26 and Class members proper wages for all hours worked, at the proper rates of pay. Plaintiffs and Class
27 Members were consistently required to perform work, off-the-clock, for which they were not paid
28 wages. Specifically, Plaintiffs and Class Members were systemically required to show up to work

1 early, find their department, and conduct pre-work inspections before clocking in. Further, Plaintiffs
2 and Class Members were required to show up to work early and undergo mandatory COVID-related
3 checks (including temperature checks, nasal swabs, and symptom questionnaires), often waiting more
4 than 30 minutes. In addition, Plaintiffs and Class Members often had to wait in line to clock in to
5 work while others were clocking in. Plaintiffs and Class Members were also required to use their
6 personal cell phones for work-related activities while off the clock. The foregoing and uncompensated
7 time was done under the control and direction of Defendants, for which no wages were paid.

8 22. Defendants had a common policy and practice of systemically denying Plaintiffs and
9 non-union Class Members the opportunity to take meal periods in compliance with the California
10 Law. Specifically, the pre-shift off-the-clock duties, discussed herein, delayed Plaintiffs and non-
11 union Class Members' meal periods, to commence after the completion of their fifth hour of work.

12 23. Plaintiffs and non-union Class Members were not provided with meal periods of at
13 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
14 scheduling each meal period as part of each work shift; and (2) no formal written meal policy that
15 encouraged employees to take their meal periods, or that advised non-union Class Members of their
16 meal and rest period rights.

17 24. Defendants had a common policy and practice of systemically denying Plaintiffs and
18 non-union Class Members the opportunity to take rest periods in compliance with the California Law.
19 Plaintiffs and non-union Class Members were not provided with rest periods of at least ten (10)
20 minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy
21 of not scheduling each rest period as part of each work shift, including second rest breaks for shifts
22 of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees
23 to take their rest periods, or that properly advised Plaintiffs and non-union Class Members of their
24 rest period rights; (3) Defendants' policy and practice of requiring Plaintiffs and non-union Class
25 Members to perform uncompensated pre-shift duties, which delayed the commencement of Plaintiffs'
26 and non-union Class Members' rest breaks.

27 25. Furthermore, Defendants failed to pay Plaintiffs and non-union Class Members
28 premium pay wages at their appropriate regular rates of pay for each meal period and rest break

1 denied.

2 26. Plaintiffs and Class Members were not provided with accurate wage statements as
3 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
4 statements as “a detachable part of the check, draft, or voucher paying the employee’s wages, or
5 separately if wages are paid by personal check or cash, an accurate itemized statement in writing.”
6 Additionally, the wage statements issued to Plaintiffs and Class Members were not recorded in “ink
7 or other indelible form.”

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

10 28. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked
11 by the employee” were not accurately reflected in that: all hours worked, were not included.

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

14 30. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee” were not accurately reflected in that: all hours worked were not included.

17 31. Furthermore, Defendants failed to provide Plaintiffs and Class Members with paper
18 pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters.
19 Plaintiffs’ and Class Members’ wage statement were only provided in electronic format in violation
20 of Labor Code § 226.

21 32. Plaintiffs and Class Members were not reimbursed for business expenses incurred in
22 executing their duties under Defendant’s employ. Specifically, Plaintiffs and Class Members were
23 required to use their personal cell phones for work-related activities, incurring costs for cell phone
24 usage and maintenance. Further, Plaintiffs and Class Members were required to wear and maintain a
25 clean and presentable uniform, incurring cleaning and maintenance costs. In addition, Plaintiffs and
26 Class Members were required to purchase and incur costs maintaining protective gear necessary for
27 Plaintiffs’ and Class Members’ work duties. Finally, Plaintiffs and Class Members were required to
28 work from home, incurring costs for internet, gas, water, rent and utilities. Defendants never

1 reimbursed Plaintiffs and Class Members for these necessary work-related expenses.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE MEAL PERIODS**

4 **(Lab. Code §§ 226.7, 512, 1174, and 1198)**

5 **(Plaintiffs and Meal Period Sub-Class)**

6 33. Plaintiffs incorporate by reference the preceding paragraphs of the Complaint as if
7 fully alleged herein.

8 34. At all relevant times, Plaintiffs and the **Meal Period Sub-Class** members have been
9 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
10 Code and the applicable Industrial Welfare Commission Wage Order.

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

16 36. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
17 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
18 during required meal periods and require employers to pay non-exempt employees an hour of
19 premium wages on each workday that the employee is not provided with the required meal period.

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

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

24 39. Section 11 of the applicable Wage Order states:

25 No employer shall employ any person for a work period of more than
26 five (5) hours without a meal period of not less than 30 minutes, except
27 that when a work period of not more than six (6) hours will complete
28 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 meal period shall be considered an
‘on duty’ meal period and counted as time worked. An ‘on duty’ meal

1 period shall be permitted only when the nature of the work prevents an
2 employee from being relieved of all duty and when by written
3 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.

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

7 41. Plaintiffs alleges that, at all relevant times during the applicable limitations period,
8 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
9 **Period Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each
10 five (5) hour work period, as required by Labor Code section 512 and the applicable Wage Order.
11 Specifically, the pre-shift off-the-clock duties, discussed herein, delayed Plaintiffs' and **Meal Period**
12 **Sub-Class** members' meal periods, to commence after the completion of their fifth hour of work.

13 42. Plaintiffs and **Meal Period Sub-Class** members were not provided with meal periods
14 of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
15 scheduling each meal period as part of each work shift; and (2) no formal written meal policy that
16 encouraged employees to take their meal periods, or that advised **Meal Period Sub-Class** members
17 of their meal and rest period rights.

18 43. Plaintiffs allege that, at all relevant times during the applicable limitations period,
19 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
20 **Class** members when they worked five (5) hours without clocking out for any meal period.

21 44. Plaintiffs allege that, at all relevant times during the applicable limitations period,
22 Defendants maintained a policy or practice of not providing Plaintiffs and members of the **Meal**
23 **Period Sub-Class** with a second meal period when they worked shifts of ten (10) or more hours and
24 failed to pay them premium wages as required by Labor Code 512 and the applicable Wage Order.

25 45. Moreover, Defendants written policies fail to inform Meal period Class Members of
26 their meal period rights under the Labor Code and applicable Wage Orders.

27 46. At all relevant times, Defendants failed to pay Plaintiffs and the **Meal Period Sub-**
28 **Class** members additional premium wages, and/or were not paid premium wages at the employees'

1 regular rates of pay when required meal periods were not provided.

2 47. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiffs, on behalf of
3 themselves and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages,
4 interest thereon, and costs of suit.

5 48. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
6 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
7 the **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REST PERIODS**

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

11 **(Plaintiffs and Rest Period Sub-Class)**

12 49. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
13 herein.

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

17 51. Section 12 of the applicable Wage Order imposes an affirmative obligation on
18 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
19 (10) minutes of net rest time for each four (4) hour work period, or major fraction thereof, that must
20 be in the middle of each work period insofar as practicable.

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

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

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

56. Plaintiffs and **Rest Period Sub-Class** members were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Plaintiffs and **Rest Period Sub-Class** members of their rest period rights; (3) Defendants' policy and practice of requiring Plaintiffs and **Rest Period Sub-Class** members to perform uncompensated pre-shift duties, which delayed the commencement of Plaintiffs and Class Members' rest breaks.

58. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiffs, on behalf of themselves and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and costs of suit.

THIRD CAUSE OF ACTION

60. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

1 applicable Wage Order.

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

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

8 64. Labor Code section 1194 invalidates any agreement between an employer and an
9 employee to work for less than the minimum wage required under the applicable Wage Order.

10 65. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
11 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
12 to the underlying unpaid minimum wages and interest thereon.

13 66. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
14 than the minimum wage required under the applicable Wage Order for all hours worked during a
15 payroll period.

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

19 68. Labor Code section 1198 makes it unlawful for employers to employ employees under
20 conditions that violate the applicable Wage Order.

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

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

27 71. Plaintiffs are informed and believe that, at all relevant times, Defendants have applied
28 centrally devised policies and practices to them and **Hourly Employee Class** members with respect

1 to working conditions and compensation arrangements.

2 72. At all relevant times, Defendants failed to pay hourly wages to Plaintiffs and **Hourly**
3 **Employee Class** members for all time worked at statutory and/or agreed rates.

4 73. Plaintiffs and **Hourly Employee Class** members were not paid proper wages for all
5 hours worked, at the proper rates of pay.

6 74. Plaintiffs and **Hourly Employee Class** members were consistently required to
7 perform work, off-the-clock for which they were not paid wages. Specifically, Plaintiffs and **Hourly**
8 **Employee Class** members were systemically required to show up to work early, find their
9 department, and conduct pre-work inspections before clocking in. Further, Plaintiffs and **Hourly**
10 **Employee Class** members were required to show up to work early and undergo mandatory COVID-
11 related checks (including temperature checks, nasal swabs, and symptom questionnaires), often
12 waiting more than 30 minutes. In addition, Plaintiffs and **Hourly Employee Class** members often
13 had to wait in line to clock in to work while others were clocking in. Plaintiffs and **Hourly Employee**
14 **Class** members were also required to use their personal cell phones for work-related activities while
15 off the clock. The foregoing and uncompensated time was done under the control and direction of
16 Defendants, for which no wages were paid.

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

20 76. Pursuant to Labor Code sections 204, 218.6, 223, 1194 and 1194.2, Plaintiffs, on
21 behalf of themselves and **Hourly Employee Class** members, seek to recover unpaid straight time,
22 interest thereon and costs of suit.

23 77. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
24 substantial benefit doctrine, and/or the common fund doctrine, Plaintiffs, on behalf of themselves and
25 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

26 ///

27 ///

28 ///

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(Plaintiffs and Wage Statement Penalties Sub-Class)

78. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

79. 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.

80. 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
///

1 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

2 81. Plaintiffs are informed and believe that, at all relevant times during the applicable
3 limitations period, Defendants have failed to provide Plaintiffs and **Wage Statement Class**
4 members with written wage statements as described above. Additionally, the wage statements
5 issued to class members failed to account for the unpaid minimum wages, and premium pay wages
6 described above.

7 82. Furthermore, Defendants failed to provide Plaintiffs and **Wage Statement Class**
8 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
9 Opinion Letters. Plaintiffs' and **Wage Statement Class** members' wage statements were only
10 provided in electronic format in violation of Labor Code § 226.

11 83. Defendants failed to comply with Labor Code section 226(a)(8) as the wage statements
12 issues to Plaintiffs and **Wage Statement Class** Members failed to state "the name and address of the
13 legal entity that is the employer."

14 84. Plaintiffs are informed and believe that Defendants' failure to provide Plaintiffs and
15 **Wage Statement Class** members with accurate written wage statements was intentional in that
16 Defendants have the ability to provide them with accurate wage statements but have intentionally
17 provided them with written wage statements that Defendants have known do not comply with Labor
18 Code section 226(a).

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

27 86. Pursuant to Labor Code section 226(e), Plaintiffs, on behalf of themselves and **Wage**
28 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in

1 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
 2 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
 3 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

4 **FIFTH CAUSE OF ACTION**

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

6 **(Lab. Code §§ 201-203)**

7 **(Plaintiffs and Waiting Time Penalties Sub-Class)**

8 87. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
 9 herein.

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

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

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

18 91. Plaintiffs are informed and believe that, at all relevant times during the applicable
 19 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
 20 members all their final wages in accordance with the Labor Code.

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

25 93. Plaintiffs are informed and believe, and thereupon allege that Defendants' failure to
 26 timely pay all final wages to them and **Waiting Time Penalties Sub-Class** members has been willful
 27 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
 28 and/or 202 but have intentionally adopted policies or practices that are incompatible with those

1 requirements.

2 94. Pursuant to Labor Code sections 203 and 218.6, Plaintiffs, on behalf of themselves
3 and **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that
4 their final wages have first become due until paid, up to a maximum of thirty days, and interest
5 thereon.

6 95. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
7 and/or the common fund doctrine, Plaintiffs, on behalf of themselves and **Waiting Time Penalties**
8 **Sub-Class** members, seek awards of reasonable attorneys' fees and costs.

9 SIXTH CAUSE OF ACTION

10 FAILURE TO INDEMNIFY

11 (Lab. Code § 2802)

12 (Plaintiffs and Reimbursement Class)

13 96. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
14 herein.

15 97. Labor Code section 2802(a) states:

16 An employer shall indemnify his or her employee for all necessary
17 expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties, or of his or her obedience to the
19 directions of the employer, even though unlawful, unless the employee,
20 at the time of obeying the directions, believed them to be unlawful.

21 98. Plaintiffs and **Expense Reimbursement Class** members were not reimbursed for
22 business expenses incurred in executing their duties under Defendant's employ. Specifically,
23 Plaintiffs and **Expense Reimbursement Class** members were required to use their personal cell
24 phones for work-related activities, incurring costs for cell phone usage and maintenance. Further,
25 Plaintiffs and **Expense Reimbursement Class** members were required to wear and maintain a clean
26 and presentable uniform, incurring cleaning and maintenance costs. In addition, Plaintiffs and
27 **Expense Reimbursement Class** members were required to purchase and incur costs maintaining
28 protective gear necessary for Plaintiffs' and **Expense Reimbursement Class** members' work duties.
Finally, Plaintiffs and **Expense Reimbursement Class** members were required to work from home,
incurring costs for internet, gas, water, rent and utilities. Defendants never reimbursed Plaintiffs and

1 **Expense Reimbursement Class** members for these necessary work-related expenses.

2 99. Accordingly, Plaintiffs and **Expense Reimbursement Class** members are entitled to
3 restitution for all unpaid amounts due and owing to within four (4) years of the date of the filing of
4 the Complaint and until the date of entry of judgment.

5 100. Plaintiffs, on behalf of themselves, and **Expense Reimbursement Class** members,
6 seek interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
7 and costs pursuant to Code of Civil Procedure section 1021.5.

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

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

11 **(Plaintiffs and UCL Class)**

12 101. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged
13 herein.

14 102. Business and Professions Code section 17200 defines "unfair competition" to include
15 any unlawful business practice.

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

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

23 105. Plaintiffs and the **UCL Class** members re-allege and incorporate the FIRST,
24 SECOND, THIRD, and SIXTH causes of action herein.

25 106. Plaintiffs lost money or property as a result of the aforementioned unfair competition.

26 107. Defendants have or may have acquired money by means of unfair competition.

27 108. Plaintiffs are informed and believe, and thereupon allege that by committing the Labor
28 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
///

1 226.6, 226.7, 354, 408, 512, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 as
2 well as applicable Wage Orders, which make it a misdemeanor to commit the violations alleged
3 herein.

4 109. Defendants have committed criminal conduct through their policies and practices of,
5 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
6 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;
7 and reimbursement for necessary business expenditures.

8 110. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
9 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
10 Business and Professions Code section 17200 *et seq.* protects against unfair competition and allows
11 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
12 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
13 similarly situated persons in a class action proceeding.

14 111. As a result of Defendants' violations of the Labor Code during the applicable
15 limitations period, Plaintiffs have suffered an injury-in-fact and have lost money or property in the
16 form of earned wages. Specifically, Plaintiffs have lost money or property as a result of Defendants'
17 conduct.

18 112. Plaintiffs are informed and believe that other similarly situated persons have been
19 subject to the same unlawful policies or practices of Defendants.

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

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

26 115. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
27 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
28 Defendants, and each of them, and their agents and employees, from further violations of the Labor

1 Code and applicable Wage Orders.

2 116. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
3 request the issuance of temporary, preliminary and permanent injunctive relief enjoining Defendants,
4 and each of them, and their agents and employees, from further violations of the Labor Code and
5 applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an order
6 permanently enjoining Defendants, and each of them, and their respective agents and employees,
7 from further violations of the Labor Code and applicable Industrial Welfare Commission Wage
8 Orders.

9 117. Pursuant to Business and Professions Code section 17203, Plaintiffs, on behalf of
10 themselves and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
11 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
12 and unfair business practices.

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

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

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

23 **EIGHTH CAUSE OF ACTION**

24 **CIVIL PENALTIES**

25 **(Lab. Code §§ 2698, *et seq.*)**

26 121. Plaintiffs incorporate the preceding paragraphs as if fully alleged herein.

27 122. During the applicable limitations period, Defendants have violated Labor Code §§
28 201, 202, 203, 204, 210, 226, 226.3, 226.7, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194,

1 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

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

6 124. Plaintiffs, former employees against whom Defendants committed one or more of the
7 alleged Labor Code violations during the applicable limitations period, are aggrieved employees
8 within the meaning of Labor Code § 2699(c). Plaintiffs were employed by Defendants as non-exempt
9 hourly employees in California. Aggrieved Employees include all non-exempt hourly employees of
10 Defendants within the state of California from one year prior to the date of this letter and continuing
11 through the present (Plaintiffs and Aggrieved Employees are collectively referred to herein as
12 “Aggrieved Employees”)

13 125. Plaintiffs have complied with the procedures for bringing suit specified in Labor Code
14 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
15 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiffs with any notice of an
16 intent to investigate.

17 126. Pursuant to Labor Code sections 2699(a) and (f), Plaintiffs seek the following civil
18 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 512,
19 515, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 20 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 515, 1174, 1194, 1198
21 and 2802, one hundred dollars (\$100) for each employee per pay period for
22 each initial violation and two hundred dollars (\$200) for each employee per
23 pay period for each subsequent violation (penalties set by Labor Code §
24 2699(f)(2));

25
26 ¹ Plaintiffs 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 Plaintiffs under *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.

- 1 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
- 2 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 3 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
- 4 employee for each initial violation that was neither willful nor intentional, two
- 5 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
- 6 withheld from each employee, for each initial violation that was either willful
- 7 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
- 8 five percent (25%) of the amount unlawfully withheld from each employee,
- 9 for each subsequent violation, regardless of whether the subsequent violation
- 10 was either willful or intentional (penalties set by Labor Code § 210);
- 11 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
- 12 employee for each initial violation that was neither willful nor intentional, two
- 13 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
- 14 the amount unlawfully withheld from each employee, for each initial violation
- 15 that was either willful or intentional, and two hundred dollars (\$200) for each
- 16 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
- 17 from each employee, for each subsequent violation, regardless of whether the
- 18 subsequent violation was either willful or intentional (penalties set by Labor
- 19 Code § 225.5);
- 20 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
- 21 citation, two hundred and fifty dollars (\$250) for each employee for each
- 22 violation. Alternatively, if an initial citation or its equivalent occurred before
- 23 the filing of this action, one thousand dollars (\$1,000) for each employee for
- 24 each violation (penalties set by Labor Code § 226.3);
- 25 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
- 26 employee for each initial pay period for which the employee was underpaid,
- 27 and one hundred dollars (\$100) for each employee for each subsequent pay
- 28 period for which the employee was underpaid (penalties set by Labor Code §

558);

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

viii. Pursuant to Labor Code § 2699(g), Plaintiffs seek an award of reasonable attorneys' fees and costs in connection with Plaintiffs' claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, the State of California, and the general public, pray for relief and judgment against Defendants as follows:

- a. An order that the action be certified as a class action;
- b. An order that Plaintiffs be appointed class representatives;
- c. An order that counsel for Plaintiffs 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: March 25, 2024

D.LAW, INC.

/s/David Yeremian

Emil Davtyan
David Yeremian
David Keledjian
Kevin Burns
Attorneys for Plaintiffs
BRANDON HOLLIFIELD and NATALIA
SPORNIK, and the putative class

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves, all other similarly situated, and the general public, hereby demand a jury trial on all issues so triable.

Dated: March 25, 2024

D.LAW, INC.

/s/David Yeremian

Emil Davtyan
David Yeremian
David Keledjian
Kevin Burns
Attorneys for Plaintiffs
BRNADON HOLLIFIELD and NATALIA
SPORNIK, and the putative class