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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN BERNARDINO

10 UNLIMITED JURISDICTION

11 ADAN ORTIZ, on behalf of himself and all
12 others similarly situated,

13 *Plaintiff,*

14 v.

15 KIMCO STAFFING SERVICES, INC., a
California corporation; and DOES 1 through
16 50, inclusive,

17 *Defendants.*

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
9/26/2024 4:25 PM
By: Camille Jones, DEPUTY

Case No. CIVSB2402387

CLASS AND REPRESENTATIVE ACTION

FIRST AMENDED COMPLAINT

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
5. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff ADAN ORTIZ (“Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges as follows:

3 **INTRODUCTION**

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

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to pay them overtime wages at the correct rate;
- 16 (7) failed to pay them double time wages at the correct rate;
- 17 (8) failed to pay them overtime and/or double time wages by failing to include all
18 applicable remuneration in calculating the regular rate of pay;
- 19 (9) failed to pay them for all vested vacation pay;
- 20 (10) failed to pay them all of their final wages following separation of employment.

21 Based on these alleged violations, Plaintiff now brings this representative action to recover unpaid
22 wages, restitution, civil and statutory penalties, and related relief on behalf of himself, all others
23 similarly situated, and the general public.

24 **JURISDICTION AND VENUE**

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

28 3. Venue is proper in SAN BERNARDINO pursuant to Code of Civil Procedure §§

1 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are
2 the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
3 offices, transacts business, and/or has an agent therein.

4 **PARTIES**

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

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

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

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

24 **CLASS ALLEGATIONS**

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

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

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

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

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

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

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

16 **Regular Rate Class:** All of Defendants' hourly, non-exempt employees who were not
17 paid overtime wages for all overtime hours worked and/or premiums for meal and/or
18 rest break violations as a result of not correctly calculating their regular rate of pay to
19 include all applicable remuneration, including, but not limited to, shift differentials,
20 shift premiums, and/or non-discretionary bonuses.

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

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

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

- i. Whether Defendants maintained a policy or practice of failing to provide employees
with their meal periods;
- ii. Whether Defendants maintained a policy or practice of failing to provide employees

- 1 with their rest periods;
- 2 iii. Whether Defendants failed to pay premium wages to class members when they have
- 3 not been provided with required meal and/or rest periods;
- 4 iv. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 5 as a result of policies that fail to provide meal periods in accordance with California
- 6 law;
- 7 v. Whether Defendants failed to pay minimum and/or overtime wages to class members
- 8 for all time worked;
- 9 vi. Whether Defendants used payroll formulas that systematically fail to account for
- 10 non-discretionary bonuses and/or other applicable remuneration when calculating
- 11 regular rates of pay for class members;
- 12 vii. Whether Defendants failed to pay overtime wages to class members as a result of
- 13 incorrectly calculating their regular rates of pay;
- 14 viii. Whether Defendants failed to pay premium wages to class members based on their
- 15 respective “regular rates of compensation” by not including commissions and/or
- 16 other applicable remuneration in calculating the rates at which those wages are paid;
- 17 ix. Whether Defendants failed to provide proportionate accruals for vested vacation time
- 18 for class members as required by California law;
- 19 x. Whether Defendants are liable to class members for waiting time penalties under
- 20 Labor Code section 203;

21 13. **Typicality:** Plaintiff’s claims are typical of the other class members’ claims. Plaintiff

22 is informed and believes, and thereupon alleges, that Defendants have a policy or practice of failing

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

24 14. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in

25 that he has no interests that are adverse to or otherwise conflict with the interests of absent class

26 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly

27 and adequately represent and protect the interests of the other class members.

28 15. **Adequacy of Class Counsel:** Plaintiff’s counsel are adequate class counsel in that

1 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
2 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
3 behalf of Plaintiff and absent class members.

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

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

15 17. Plaintiff worked for Defendants as an hourly, non-exempt employee from
16 approximately January 3, 2023, through May 5, 2023.

17 **Security Check and Off-the-Clock**

18 18. Plaintiff and the putative class were required to utilize the general entrance to the
19 premises and required to go through a security check at the time of entering and leaving the
20 premises where they worked.

21 19. Upon arriving at the premises, Plaintiff and the putative class were required to pass
22 through a metal detector and pass through a turnstile door. In order to pass through the turnstile
23 door, Plaintiff and the putative class were required to scan an employee ID badge.

24 20. Defendants had a practice or policy of not providing Plaintiff and the putative class
25 with ID badges required to pass through the turnstile doors after two to four months of
26 employment. If an employee did not have an employee badge, they were required to be scanned in
27 by an on-duty security officer before leaving or entering the premises.

28 21. Defendants were understaffed and only had one on duty, a security officer on the

1 premises. When the security officer was not present, for example when the officer took a break or
2 was otherwise not at the security checkpoint, employees without an ID badge were required to wait
3 until the security officer returned to enter or leave the premises which could take five to ten
4 minutes.

5 22. Plaintiff and the putative class clocked in using iPads located inside the premises.
6 There are two iPad near the turnstile security gate and one iPad in the breakroom. Plaintiff and the
7 putative class were not able to clock in to begin their shift until after passing through the security
8 check point.

9 23. Further, often Plaintiff and the putative class would often have to wait in line to
10 proceed through the security checkpoint, typically when most employees would clock in at the
11 beginning of the day or when trying to leave the premises. Since there was only one turnstile gate,
12 a line of three to eight employees could gather at one time as they all tried to enter or exit the
13 premises. Plaintiff and the putative class would wait an additional two to five minutes to pass
14 through the metal detector and turnstile gate once there was a security guard on duty.

15 24. Plaintiff and the putative class were required to go through the security check prior
16 to clocking in at the beginning of each work shift and were required to clock out prior to going
17 through the security check, thus time spent waiting for lines or for a security clearance was not
18 accurately reflected in their time cards.

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

22 **Clock In Process**

23 26. Plaintiff and the putative class were trained to clock in for each work shift one of
24 three iPads on the premises. Two iPads were located near the security check point and turnstile gate.

25 27. Often, Plaintiff and the putative class were required to go through a metal detector
26 and turnstile door which created a delay in clocking in.

27 28. Plaintiff and the putative class were required to input a code then wait as the iPad
28 took a photo of the employee clocking in or out. Often there would be a line to use the iPads since

there was a limited amount available. Plaintiff and the putative class would often have to wait one to three minutes waiting in line before being able to clock in or out.

29. Further, often the iPads near the security checkpoints were often out of service. Often the iPads near the security checkpoint were unable to connect to the internet because they were placed out of range of a reliable internet connection or because they were missing chargers and would thus run out of battery. When either one or both of the iPads were not working, Plaintiff and the putative class members would need to travel to the break room where the third iPad was located. It would take approximately one to three minutes to arrive at the break room. Once arriving at the break room, since only one iPad was located there, Plaintiff and the putative class would need to wait in a longer line than usual. Plaintiff and the putative class would then need to wait three to six minutes in line before finally clocking in or out on the iPad.

30. Accordingly, by the time Plaintiff and the putative class evaluated whether the iPads near the security check point worked, travelled to the break room, waited in line to clock in, and finally inputted their employee code and took a photo on the iPad, five to ten minutes or more may have already passed – This time was not properly recorded as time worked and resulted in Plaintiff and the putative class not being paid for all hours worked by Defendants.

Missed Meal Periods

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

32. Plaintiff and the putative class did not have meal breaks scheduled and were required to ask a supervisor for permission and take their meal periods before the fifth hour of work. However, there was a limited number of visible clocks which made it difficult for Plaintiff and the putative class to know when they should take their meal period. Additionally, since defendants were understaffed, Plaintiff and the putative class would be too busy completing orders and assignments and would need to work past the fifth hour even if they knew it was time for them

1 to take a meal period.

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

7 **Shortened Meal Periods**

8 34. Plaintiff alleges that, at all relevant times during the applicable limitations period,
9 Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a
10 long line to clock in and out for their meal periods. After clocking out, Plaintiff and the putative
11 class waited in a further line to exit and return from the premises as they were required to go
12 through a security check at the general entrance to the premises at the time of entering and leaving.
13

14 35. The security check point required plaintiff and the putative class to pass through a
15 metal detector and scan an employee ID badge to pass through a turnstile gate. Since many
16 employees did not get an ID badge assigned to them until weeks or months after being hired,
17 Plaintiff and the putative class without ID badges were required to ask the security guard to allow
18 them to pass. Only one security guard would be scheduled to work at a time. When the security
19 guard on shift took a rest break, meal period, or was otherwise not at the security check point,
20 Plaintiff and the putative class were required to wait five to ten minutes until the security guard
21 returned to allow them to exit the premises and continue with their meal period.
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23 36. Further, at relevant times during the applicable limitations period, Defendants
24 maintained a policy or practice of disciplining Plaintiff and the putative class, up to and including
25 termination, if they did not clock back in from their meal periods on time. Since Plaintiff and the
26 putative class expected a delay in returning to work on time because they did not have employee
27 badges and the security guard might not be present, thus Plaintiff and the putative class would
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1 return from their meal periods early in anticipation of such delay to clock back in on time thus
2 shortening their meal periods.

3 37. Accordingly, Plaintiff and the putative class would typically have to wait in line
4 before they could clock in and out for their meal periods and wait before they could leave or return
5 from the premises.

6 38. Accordingly, Plaintiff and the putative class were provided with shortened meal
7 periods due to the time spent entering and leaving the premises, undergoing security checks, and
8 returning to their workstations.

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

15 40. Plaintiff and the putative class did not have meal breaks scheduled and were
16 required to ask to take their meal periods before the fifth hour of work. However, there was a
17 limited number of visible clocks which made it difficult for Plaintiff and the putative class to know
18 when they should take their meal period. Additionally, since defendants were understaffed,
19 Plaintiff and the putative class would be too busy completing orders and assignments and would
20 need to work past the fifth hour even if they knew it was time for them to take a meal period.

21 41. Accordingly, Plaintiff and the putative class were provided with shortened meal
22 periods due to the time spent entering and leaving the premises, undergoing security checks, and
23 returning to their workstations.

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

5 **Missed Rest Break**

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

12 44. Plaintiff and the putative class were required to be released by a lead or a supervisor
13 before they could take a rest break. Since rest breaks were not scheduled and Defendant was
14 understaffed, often Plaintiff and the putative class were released after their fourth hour of work.

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

19 **Shortened Rest Breaks**

20 46. Plaintiff alleges that, at all relevant times during the applicable limitations period,
21 Defendants maintained a policy or practice of requiring Plaintiff and the putative class to wait in a
22 long line to clock in and out for their meal periods. After clocking out, Plaintiff and putative class
23 waited in a further line to exit and return from the premises as they were required to go through a
24 security check at the general entrance to the premises at the time of entering and leaving.

25 47. The security check point required plaintiff and the putative class to pass through a
26 metal detector and scan an employee ID badge to pass through a turnstile gate. Since many
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1 employees did not get an ID badge assigned to them until weeks or months after being hired,
2 Plaintiff and the putative class without ID badges were required to ask the security guard to allow
3 them to pass. Only one security guard would be scheduled to work at a time. When the security
4 guard on shift took a rest break, meal period, or was otherwise not at the security check point,
5 Plaintiff and the putative class were required to wait five to ten minutes until the security guard
6 returned to allow them to exit the premises and continue with their rest break.
7

8 48. Further, at relevant times during the applicable limitations period, Defendants
9 maintained a policy or practice of disciplining Plaintiff and members of the putative class, up to
10 and including termination, if they did not return from their rest breaks on time. Since Plaintiff and
11 the putative class expected a delay in returning to work on time because they did not have
12 employee badges and the security guard might not be present, Plaintiff and the putative class would
13 return from their rest breaks early in anticipation of such delay, or not leave the premises at all, to
14 return to work on time.

15 49. Accordingly, Plaintiff and the putative class were provided with shortened rest
16 breaks due to the time spent entering and leaving the premises, undergoing security checks, and
17 returning to their workstations.

18 50. Plaintiff alleges that, at relevant times during the applicable limitations period, due
19 to Defendants' above-mentioned policy or practice, Plaintiff and the putative class did not receive
20 their full ten (10) minute uninterrupted meal periods that they were entitled to under California
21 law.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

26 51. Plaintiff incorporates by reference the preceding paragraphs as if fully alleged
27 herein.

28 52. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been

1 non-exempt employees of Defendants entitled to the full meal period protections of both the Labor
2 Code and the applicable Industrial Welfare Commission Wage Order (“Wage Order”).

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

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

11 55. Compensation for missed meal periods constitutes wages within the meaning of
12 Labor Code § 200.

13 56. Labor Code § 1198 makes it unlawful to employ a person under conditions that
14 violate the applicable Wage Order.

15 57. Section 11 of the applicable Wage Order states:

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

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

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

60. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**

1 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
2 regular rates of pay when required meal periods were not provided.

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

6 62. Pursuant to Labor Code § 1194, Code of Civil Procedure § 1021.5, the substantial
7 benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Meal**
8 **Period Sub-Class** members, seeks to recover reasonable attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS**

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

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

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

14 64. At all relevant times, Plaintiff 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 65. 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
19 ten minutes of net rest time for each four-hour work period, or major fraction thereof, that must be
20 in the middle of each work period insofar as practicable.

21 66. Labor Code § 226.7 and § 12 of the applicable Wage Order both prohibit employers
22 from requiring employees to work during required rest periods and require employers to pay non-
23 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 67. Compensation for missed rest periods constitutes wages within the meaning of Labor
26 Code § 200.

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**

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

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

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

17 73. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

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

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

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

27 77. Labor Code § 1194 invalidates any agreement between an employer and an
28 employee to work for less than the minimum or overtime wage required under the applicable Wage

1 Order.

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

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

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

11 81. Labor Code § 1198 makes it unlawful for employers to employ employees under
12 conditions that violate the applicable Wage Order.

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

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

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

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

28 86. Plaintiff is informed and believes that, at all relevant times, Defendants have applied

centrally devised policies and practices to him and **Hourly Employee Class** members with respect to working conditions and compensation arrangements.

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

88. Section 9 of the applicable Wage Order states:

“When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term ‘uniform’ includes wearing apparel and accessories of distinctive design or color.”

89. If the employer does not choose to maintain employees’ uniforms itself where it is required to do so, the Division of Labor Standards Enforcement (“DLSE”) takes the position that the employer may pay each affected employee a weekly maintenance allowance of an hour’s pay at the state minimum wage rate in lieu of maintaining the uniforms, assuming that an hour is a realistic estimate of the time involved in maintaining the uniform.

90. At all relevant times during the applicable limitations period, and in violation of the above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to compensate Plaintiff with minimum and/or overtime wages for all hours she worked as a result of its failure to maintain employee uniforms or pay her a weekly maintenance allowance.

91. Plaintiff is informed and believes that, at all relevant times and in violation of the above-referenced sections of the Labor Code and the applicable Wage Order, Defendants failed to compensate **Hourly Employee Class** members with minimum and/or overtime wages for all hours they worked as a result of its failures to maintain employee uniforms or pay them a weekly maintenance allowance.

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

93. As a result of Defendants’ unlawful conduct, Plaintiff and **Hourly Employee Class**

1 members have suffered damages in an amount subject to proof, to the extent they were not paid the
2 full amount of wages earned during each pay period during the applicable limitations period,
3 including overtime wages.

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

7 95. The regular rate of pay under California law includes all remuneration for
8 employment paid, on behalf of the employer, to the employee. This requirement includes but is not
9 limited to, commissions, non-discretionary bonuses, shift differential pay, etc.

10 96. During the applicable limitations period, Defendants violated the rights of Plaintiff
11 and **Hourly Employee Class** members under the above-referenced Labor Code sections by failing
12 to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194
13 and 1198 by not correctly calculating their regular rate of pay to include all applicable
14 remuneration, including but not limited to, commissions, non-discretionary bonuses, shift
15 differential pay, etc.

16 97. California law uses the terms “compensation” and “pay” interchangeably and
17 requires that all applicable remuneration, including but not limited to, commissions, non-
18 discretionary bonuses, shift differential pay, etc., be included when calculating an employee’s
19 regular rate of pay.

20 98. At all relevant times, Defendants paid Plaintiff premium wages based on a rate of
21 compensation that did not reflect, among other things, commissions, non-discretionary bonuses,
22 shift differential pay, etc. as required by Labor Code § 226.7(b) and §§ 11 and 12 of the applicable
23 Wage Order on the occasions when Defendants paid him premium wages in lieu of meal and/or rest
24 periods.

25 99. Plaintiff is informed and believes, and thereupon alleges, that, at all relevant times
26 during the applicable limitations period, Defendants maintained a policy or practice of paying
27 **Hourly Employee Class** members premium wages based on rates of compensation that have not
28 reflected commissions, non-discretionary bonuses, shift differential pay, etc. as required by Labor

1 Code § 226.7(b) and §§ 11 and 12 of the applicable Wage Order on the occasions when Defendants
2 paid them premium wages in lieu of meal and/or rest periods.

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

6 **FOURTH CAUSE OF ACTION**

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

8 **(Lab. Code §§ 201–203)**

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

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

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

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

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

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

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

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

27 108. Plaintiff is informed and believes that, at all relevant times during the applicable
28 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**

1 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
2 §§ 201 or 202 by failing to timely pay them all final wages.

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

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

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

15 **FIFTH CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698 *et seq.*)**

18 112. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
19 herein.

20 113. During the applicable limitations period, Defendants have violated Labor Code
21 sections 201, 202, 203, 204, 223, 226, 226.7, 227.3, 510, 512, 1194, 1197, 1198 and 2802.

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

26 115. Plaintiff, a former employee against who Defendants committed one or more of the
27 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
28 within the meaning of Labor Code section 2699(c).

1 116. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
2 section 2699.3.

3 117. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
4 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226, 226.7,
5 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- 6 i. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 227.3, 1194,
7 1198 and 2802, \$100 for each employee per pay period for each initial
8 violation and \$200 for each employee per pay period for each subsequent
9 violation (penalties set by Labor Code section 2699(f)(2));
- 10 ii. For violations of Labor Code section 203, a penalty in an amount not
11 exceeding thirty days pay as waiting time (penalties set by Labor Code
12 section 256);
- 13 iii. For violations of Labor Code section 204, \$100 for each employee for each
14 initial violation that was neither willful nor intentional, \$200 for each
15 employee, plus 25% of the amount unlawfully withheld from each employee,
16 for each initial violation that was either willful or intentional, and \$200 for
17 each employee, plus 25% of the amount unlawfully withheld from each
18 employee, for each subsequent violation, regardless of whether the
19 subsequent violation was either willful or intentional (penalties set by Labor
20 Code section 210);
- 21 iv. For violations of Labor Code section 223, \$100 for each employee for each
22 initial violation that was neither willful nor intentional, \$200 for each
23 employee, plus 25% of the amount unlawfully withheld from each employee,
24 for each initial violation that was either willful or intentional, and \$200 for
25 each employee, plus 25% of the amount unlawfully withheld from each
26 employee, for each subsequent violation, regardless of whether the
27 subsequent violation was either willful or intentional (penalties set by Labor
28 Code section 225.5);

- v. For violations of Labor Code section 226, if this action is deemed to be an initial citation, \$250 for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, \$1,000 for each employee for each violation (penalties set by Labor Code section 226.3);
- vi. For violation of Labor Code sections 510 and 512, \$50 for each employee for each initial pay period for which the employee was underpaid, and \$100 for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code section 558);
- vii. For violations of Labor Code section 1197, \$100 for each aggrieved employee for each initial violation of Labor Code section 1197 that was intentional, and \$250 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code section 1197.1);
- viii. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

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

- (1) An order that the action be certified as a class action;
- (2) An order that Plaintiff be appointed class representative;
- (3) An order that counsel for Plaintiff be appointed class counsel;
- (4) Unpaid wages;
- (5) Actual damages;
- (6) Liquidated damages;
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;

- 1 (10) Statutory penalties;
2 (11) Civil penalties;
3 (12) Costs of suit;
4 (13) Reasonable attorneys' fees; and
5 (14) Such other relief as the Court deems just and proper.
6

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
9 demands a jury trial on all issues so triable.
10

11 Dated: September 26, 2024 SETAREH LAW GROUP
12

13 Thomas Segal
14 SHAUN SETAREH
15 THOMAS SEGAL
16 FARRAH GRANT
Attorneys for Plaintiff
ADAN ORTIZ
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On September 26, 2024, I served the foregoing documents described as:

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

Janise A. Velez