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

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ARTURO GONZALEZ on behalf of
himself, all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

NCI GROUP, INC; DBA NCI BUILDING
SYSTEMS; and DOES 1-100,

Defendants.

Case No. 1:18-cv-00948-AWI-SKO

**PLAINTIFF'S FIRST AMENDED CLASS
ACTION COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) **Failure to Pay All Straight Time Wages;**
- 2) **Failure to Pay All Overtime Wages;**
- 3) **Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 7-2001(11); Cal. Code Regs., tit. 8 § 11090);**
- 4) **Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 7-2001(12); Cal. Code Regs. Title 8 § 11090);**
- 5) **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);**
- 6) **Failure to Pay All Wages Due at the Time of Termination of Employment (Lab. Code §§201-203);**
- 7) **Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.);and**
- 8) **Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA").**

DEMAND FOR JURY TRIAL

Plaintiff ARTURO GONZALEZ, on behalf of himself, all others similarly situated, and on behalf

of the general public, complains of Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS; and/or DOES and for causes of action and alleges:

1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff, ARTURO GONZALEZ, and all non-exempt, hourly warehouse workers, industrial workers, shipping checkers, distribution employees, shipping clerks, packers, stackers, loaders, packaging clerks, machine operators, receiving clerks, production workers, and all other similarly situated employees (hereinafter “non-exempt employees”), who are presently or formerly employed by NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES and/or their subsidiaries or affiliated companies and/or predecessors within the State of California (hereinafter “non-exempt employees”). This does not include any retail employees.

2. At all times mentioned herein, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have conducted business in MERCED County and elsewhere within California.

3. At all times mentioned herein, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or subsidiaries or affiliated companies and/or DOES, within the State of California, have, among other things, employed current and former non-exempt employees.

4. At all times mentioned herein, the common policies and practices of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES were a direct cause of Defendants’ and/or DOES’ failure to comply with California’s wage and hours laws, Wage Orders, and/or the California Labor Code, as set forth more fully within.

5. For at least four (4) years prior to the filing of this action and through to the present, Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and its Non-Exempt Employees for all of the hours they worked.

6. For at least four (4) years prior to the filing of this action and through to the present, Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had

1 a continuous and widespread policy of not paying Plaintiff and those similarly situated for
 2 all hours they worked, including before clocking in for their work shift, after clocking out
 3 for their work shift, and during unpaid meal periods. Further, Defendants NCI GROUP,
 4 INC; DBA NCI BUILDING SYSTEMS and/or DOES have had a continuous and
 5 widespread policy to shave the time Plaintiff and those similarly situated worked (referred
 6 to as “time shaving”).

7 7. For at least four (4) years prior to the filing of this action and through to the present,
 8 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had
 9 a continuous and widespread policy of “clocking-out” Plaintiff and those similarly situated
 10 for thirty (30) minute meal periods, even though Plaintiff and those similarly situated were
 11 suffered and/or permitted to work during these deduction periods, thereby deducting thirty
 12 (30) minutes of paid time, including straight time and overtime.

13 8. For at least four (4) years prior to the filing of this action and through to the present,
 14 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had
 15 a consistent policy and/or practice of failing to provide all straight time and overtime wages
 16 owed to Non-Exempt Employees, as mandated under the California Labor Code and the
 17 implementing rules and regulations of the Industrial Welfare Commission’s (“IWC”)
 18 California Wage Orders.

19 9. For at least four (4) years prior to the filing of this action and through to the present,
 20 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had
 21 a consistent policy of requiring Non-Exempt Employees within the State of California,
 22 including Plaintiff, to work through meal periods and work at least five (5) hours without
 23 a meal period and failing to pay such employees one (1) hour of pay at the employees’
 24 regular rate of compensation for each workday that the meal period is not provided, or
 25 other compensation, as required by California’s state wage and hour laws, and
 26 automatically deducting a half hours pay from their wages.

27 10. For at least four (4) years prior to filing of this action and through the present, Defendants
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1 NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES did not have a policy
2 of allowing its hourly employees working shifts of ten (10) or more hours in a day to take
3 a second meal period of not less than thirty (30) minutes as required by the applicable Wage
4 Order of the IWC.

5 11. For at least four (4) years prior to the filing of this action and through to the present,
6 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had
7 a consistent policy of requiring Non-Exempt Employees within the State of California,
8 including Plaintiff, to work over ten (10) hours without providing an additional,
9 uninterrupted meal period of thirty (30) minutes and failing to pay such employees one (1)
10 hour of pay at the employees' regular rate of compensation for each workday that the meal
11 period is not provided, or other compensation, as required by California's state wage and
12 hour laws.

13 12. For at least four (4) years prior to the filing of this action and through to the present,
14 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have had
15 a consistent policy and/or practice of requiring its Non-Exempt Employees within the State
16 of California, including Plaintiff, to work for over four hours, or a major fraction thereof,
17 without a 10 minute rest period, and failing to pay such employees one (1) hour of pay at
18 the employees' regular rate of compensation for each workday that the rest period is not
19 provide, or other compensation, as required by California's state wage and hour laws.

20 13. For at least four (4) years prior to the filing of this action and through to the present,
21 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES and/or
22 their officers and/or managing agents have had a consistent policy and/or practice of
23 willfully failing to provide to Plaintiff and its Non-Exempt Employees, accurate itemized
24 employee wage statements.

25 14. For at least four (4) years prior to the filing of this action and through to the present,
26 Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES and/or
27 their officers and/or managing agents have had a consistent policy and/or practice of
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1 willfully failing to timely pay wages owed to Plaintiff and those Non-Exempt Employees
2 who left Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES
3 employ or who were terminated.

4 15. For at least four (4) years prior to the filing of this action and through to the present, NCI
5 GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, by failing to lawfully pay
6 Plaintiff and those similarly situated all the wages they are owed, engaged in false, unfair,
7 fraudulent and deceptive business practices within the meaning of the Business and
8 Professions Code section 17200, et seq.

9 16. Throughout the statutory period, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's
10 and/or DOES' employees, including Plaintiff and similarly situated Non-Exempt
11 Employees, were not provided all straight time and overtime wages owed, meal periods
12 and rest periods, or compensation in lieu thereof, as mandated under the California Labor
13 Code, and the implementing rules and regulations of the Industrial Welfare Commissions
14 ("IWC") California Wage Orders.

15 17. Throughout the statutory period, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
16 and/or DOES employees, including Plaintiff and similarly situated Non-Exempt
17 Employees were not provided with accurate and itemized employee wage statements.

18 18. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to comply with
19 Labor Code section 226, subdivision (a), by itemizing in wage statements all hourly
20 compensation and accurately reporting total hours worked by Plaintiff and the members of
21 the proposed class. Plaintiff and members of the proposed class are entitled to penalties not
22 to exceed \$4,000 for each employee pursuant to Labor Code section 226(b).

23 19. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have failed to comply
24 with IWC Wage Order 7-2001(7) by failing to maintain accurate time records showing
25 hourly compensation, when the employee begins and ends each work day and total daily
26 hours worked by itemizing in wage statements and accurately reporting total hours worked
27 by Plaintiff and members of the proposed class.
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20. Throughout the statutory period, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES' employees, including Plaintiff and similarly situated Non-Exempt Employees, were not timely paid all wages owed to them at the time of termination.

21. Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES are and were aware that Plaintiff and members of the proposed class were not paid all straight time and overtime wages owed, nor provided meal and rest periods. Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES' denial of wages and other compensation due to Plaintiff and members of the proposed class was willful and deliberate.

22. Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, each and collectively, controlled the wages, hours, and working conditions of Plaintiff and the proposed class, creating a joint-employer relationship over Plaintiff and the proposed class.

23. Plaintiff ARTURO GONZALEZ, on behalf of himself and all of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' Non-Exempt Employees, brings this action pursuant to California Labor Code sections 226, subd. (b), 226.7. 510, 512, 515, 558, 1194, and California Code of Regulations, Title 8, sections 11090 and 3395, seeking unpaid wages, overtime, meal and rest period compensation, penalties, injunctive and other equitable relief, relief under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and reasonable attorneys' fees and costs.

24. Plaintiff ARTURO GONZALEZ, on behalf of himself and all putative Class members made up of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES' non-exempt employees, pursuant to California Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES enjoyed from their failure to pay all straight time wages, overtime wages, and meal and rest period compensation.

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I. VENUE

25. Venue as to each Defendant, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES conduct business and commit Labor Code violations within MERCED County, and each Defendant and/or DOE is within California for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of California and within MERCED County. Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES employ numerous Class members who work in MERCED County, in California.

II. PARTIES

A. Plaintiff.

26. At all relevant times, herein, Plaintiff ARTURO GONZALEZ is and was a resident of California. At all relevant times, herein, he was employed by Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES within the last four (4) years as a non-exempt, hourly shipping checker in California.

27. On or about January 14, 2020, Plaintiff filed a Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3 with the Labor and Workforce Development Agency (“LWDA”). To date, Plaintiff has not received notice that the LWDA will be taking action in response to Plaintiff’s Notice.

28. On information and belief, Plaintiff and all other members of the proposed class experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES’ common company policies of failing to pay all straight time and overtime wages owed.

29. On information and belief, Plaintiff and all other members of the proposed class experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES’ common company policies of illegally deducting wages from employees for meal periods during which they were performing work.

1 30. On information and belief, Plaintiff and all other members of the proposed class
2 experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or
3 DOES' common company policies and/or practices of failing to pay all straight time and
4 overtime wages owed, and failing to provide compliant meal periods to employees before
5 the end of their fifth hour of work or a second meal period before the end of the tenth hour
6 or work, or compensation in lieu thereof.

7 31. On information and belief, Plaintiff and all other members of the proposed class
8 experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or
9 DOES' common company policies of failing to provide ten (10) minute paid rest breaks to
10 employees whom worked four (4) hours or major fractions thereof.

11 32. On information and belief, Plaintiff and all other members of the proposed class
12 experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or
13 DOES' common company policies of failing to provide Non-Exempt Employees with
14 accurate itemized wage statements. On information and belief, Defendants and/or DOES
15 failure to provide to their Non-Exempt Employees, including Plaintiff, with accurate
16 itemized wage statements was willful.

17 33. On information and belief, Plaintiff and all other members of the proposed class
18 experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or
19 DOES' common company policies of failing to timely compensate Non-Exempt
20 Employees all wages owed upon termination. On information and belief, Defendants
21 and/or DOES' failure to pay, in a timely manner, compensation owed to Non-Exempt
22 Employees, including Plaintiff, upon termination of their employment with NCI GROUP,
23 INC; DBA NCI BUILDING SYSTEMS and/or DOES was willful.

24 34. On information and belief, Plaintiff and all other members of the proposed class
25 experienced Defendants NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or
26 DOES' fraudulent and deceptive business practices within the meaning of the Business and
27 Professions Code section 17200, et seq.
28

35. Plaintiff and the proposed class are covered by, inter alia, California IWC Occupational Wage Order No. 7-2001, and Title 8, California Code of Regulations, §§ 11090 and 3395.

B. Defendants.

36. At all relevant times herein, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES engage in the ownership and operation of facilities which manufacture, market, stock, check, deliver, or manage industrial goods and products in the State of California.

37. On information and belief, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class throughout the liability period.

38. At NCI Group, Inc., doing business as “NCI Building Systems, Inc.” they “design, manufacture and market a comprehensive line of metal buildings and components for the nonresidential construction industry.” NCI Building Systems, Inc., <http://www.ncibuildingsystems.com/>, (Last Visited June 4th, 2018). NCI Building Systems, Inc. was founded in 1985 and “serve[s] the low-rise market, five stories or fewer, which represents 85 percent of the total nonresidential construction industry.” *Id.*

39. The NCI Group, Inc. employs “over 5,300 employees in US, Mexico and Canada.” *Id.* They claim to “create great building solutions everyday by living [their] core values of Personal Responsibility, Commitment to Excellence, and Exceptional Customer Experience.” *Id.*

40. “Personal Responsibility” and “Commitment to Excellence” doesn’t just refer to the treatment of customers and potential clients. It should also refer to the treatment of all employees. All NCI Building Systems employees should get promptly paid for all their time worked.

41. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES principal place of business is in the State of California.

42. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues

1 these Defendants by such fictitious names under Code of Civil Procedure section 474.
2 Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts
4 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
5 true names and capacities of the Defendants designated hereinafter as DOES when such
6 identities become known.

7 43. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or
8 DOE acted in all respects pertinent to this action as the agent of the other Defendant and/or
9 DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
10 and the acts of each Defendant and/or DOES are legally attributable to the other Defendants
11 and/or DOES.

12 **III. CLASS ACTION ALLEGATIONS**

13 44. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
14 action pursuant to section 382 of the California Code of Civil Procedure. Plaintiff seeks to
15 represent a Class composed of and defined as follows:

16
17 All persons who are employed or have been employed by
18 Defendants in the State of California as hourly, Non-Exempt
19 employees during the period of the relevant statute of limitations.

20
21 Plaintiff also seeks to represent subclasses composed of and defined as follows:

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23 All persons who are or have been employed by NCI GROUP, INC;
24 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
25 California as hourly, Non-Exempt employees during the period of
26 the relevant statute of limitations, who worked one (1) or more shifts
27 in excess of five (5) hours.
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All persons who are or have been employed by NCI GROUP, INC;
DBA NCI BUILDING SYSTEMS and/or DOES in the State of
California as hourly, Non-Exempt employees during the period of
the relevant statute of limitations, who worked one (1) or more shifts
in excess of six (6) hours.

All persons who are or have been employed by NCI GROUP, INC;
DBA NCI BUILDING SYSTEMS and/or DOES in the State of
California as hourly, Non-Exempt employees during the period of
the relevant statute of limitations, who worked one (1) or more shifts
in excess of ten (10) hours.

All persons who are or have been employed by NCI GROUP, INC;
DBA NCI BUILDING SYSTEMS and/or DOES in the State of
California as hourly, Non-Exempt employees during the period of
the relevant statute of limitations, who worked one (1) or more shifts
in excess of twelve (12) hours.

All persons who are or have been employed by NCI GROUP, INC;
DBA NCI BUILDING SYSTEMS and/or DOES in the State of
California as hourly, Non-Exempt employees during the period of
the relevant statute of limitations, who worked one (1) or more shifts
in excess of two (2) hours.

All persons who are or have been employed by NCI GROUP, INC;
DBA NCI BUILDING SYSTEMS and/or DOES in the State of

1 California as hourly, Non-Exempt employees during the period of
2 the relevant statute of limitations, who worked one (1) or more shifts
3 in excess of three (3) hour and one-half hours, but less than or equal
4 to six (6) hours.

5
6 All persons who are or have been employed by NCI GROUP, INC;
7 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
8 California as hourly, Non-Exempt employees during the period of
9 the relevant statute of limitations, who worked one (1) or more shifts
10 in excess of six (6) hours, but less than or equal to ten (10) hours.

11
12 All persons who are or have been employed by NCI GROUP, INC;
13 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
14 California as hourly, Non-Exempt employees during the period of
15 the relevant statute of limitations, who worked one (1) or more shifts
16 in excess of ten (10) hours.

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18 All persons who are or have been employed by NCI GROUP, INC;
19 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
20 California as hourly, Non-Exempt employees during the period of
21 the relevant statute of limitations, who separated their employment
22 from Defendants.

23
24 All persons who are or have been employed by NCI GROUP, INC;
25 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
26 California as hourly, Non-Exempt employees during the period of
27 the relevant statute of limitations, who worked one (1) or more shifts
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1 in which they received a wage statement for the corresponding pay
2 period.

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4 All persons who are or have been employed by NCI GROUP, INC;
5 DBA NCI BUILDING SYSTEMS and/or DOES in the State of
6 California as hourly, Non-Exempt employees during the period of
7 the relevant statute of limitations, who were deducted wages for
8 meal periods.

9 45. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to
10 amend or modify the Class description with greater specificity or further division into
11 subclasses or limitation to particular issues.

12 46. This action has been brought and may properly be maintained as a class action under the
13 provisions of section 382 of the California Code of Civil Procedure because there is a well-
14 defined community of interest in the litigation and the proposed Class is easily
15 ascertainable.

16 **A. Numerosity.**

17 47. The potential members of the Class as defined are so numerous that joinder of all the
18 members of the Class is impracticable. While the precise number of Class members has
19 not been determined at this time, Plaintiff is informed and believes that NCI GROUP, INC;
20 DBA NCI BUILDING SYSTEMS and/or DOES currently employ, and during the liability
21 period employed, over fifty (50) employees, all in the State of California, in positions as
22 hourly non-exempt employees.

23 48. Accounting for employee turnover during the relevant periods increases this number
24 substantially. Upon information and belief, Plaintiff alleges NCI GROUP, INC; DBA NCI
25 BUILDING SYSTEMS's and/or DOES' employment records will provide information as
26 to the number and location of all Class members. Joinder of all members of the proposed
27 Class is not practicable.
28

B. Commonality.

49. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

(1) Whether NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay its non-exempt workers all earned wages at the regular rate for all hours worked.

(2) Whether NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' uniform policies and/or practices whereby non-exempt workers were pressured and/or incentivized to forego taking meal and/or rest periods.

(3) Whether NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 7-2001 or other applicable IWC Wage Orders, and/or California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to its hourly, non-exempt employees for every four (4) hours or major fraction thereof worked and/or failing to pay said employees one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.

(4) Whether NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the proposed Class who left NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' employ or who were terminated.

(5) Whether NCI GROUP, INC; DBA NCI BUILDING

1 SYSTEMS and/or DOES violated Labor Code section 203, which provides
2 for the assessment of a penalty against the employer, by willfully failing to
3 timely pay all wages owed to employees who left NCI GROUP, INC; DBA
4 NCI BUILDING SYSTEMS's and/or DOES' employ or who were
5 terminated.

6 (6) Whether NCI GROUP, INC; DBA NCI BUILDING
7 SYSTEMS and/or DOES had uniform policies and/or practices of failing to
8 provide employees accurate and itemized wage statements.

9 (7) Whether NCI GROUP, INC; DBA NCI BUILDING
10 SYSTEMS and/or DOES had uniform policies and/or practices of failing to
11 timely pay all wages owed to employees who left NCI GROUP, INC; DBA
12 NCI BUILDING SYSTEMS's and/or DOES' employ or who were
13 terminated.

14 50. The answer to each of these respective questions will generate a common answer capable
15 of resolving class-wide liability in one stroke.

16 51. Said common questions predominate over any individualized issues and/or questions
17 affecting only individual members.

18 **C. Typicality.**

19 52. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff
20 and all members of the proposed class sustained injuries and damages arising out of and
21 caused by NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES'
22 common course of conduct in violation of laws and regulations that have the force and
23 effect of law and statutes as alleged.

24 53. Plaintiff ARTURO GONZALEZ was subjected to the same uniform policies and/or
25 practices complained of herein that affected all such employees. Thus, as ARTURO
26 GONZALEZ was subjected to the same unlawful policies and practices as all hourly non-
27 exempt employees, his claims are typical of the class he seeks to represent.
28

D. Adequacy of Representation.

54. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class.

55. Plaintiff is ready and willing to take the time necessary to help litigate this case.

56. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and protect the interests of the members of the Class.

57. Counsel who represent Plaintiff are competent and experienced in litigating large employment class actions.

58. Specifically, David Mara, Esq., Jamie Serb, Esq., and Nikki Trenner, Esq., are California lawyers in good standing.

59. Mr. Mara wrote winning amicus briefs in two very worker friendly California Supreme Court cases: *Augustus v. ABM Security Servs.* (2016) 2 Cal.5th 257 and *Williams v. Superior Court* (decided July 13, 2017).

60. Mr. Mara was appointed class counsel in the landmark California Supreme Court case, *Brinker v. Superior Court* and have been appointed as class counsel in many California wage and hour cases, in both State Court and Federal Court.

61. Mara Law Firm, PC have the resources to take this case to trial and judgment, if necessary.

62. Mr. Mara has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

63. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' illegal policies and/or practices of failing to pay all straight time and overtime wages owed, failing to permit or authorize rest periods, failing to provide meal

1 periods, knowingly and intentionally failing to comply with wage statement requirements,
2 and failing to pay all wages due at termination.

3 64. Class action treatment will allow those similarly situated persons to litigate their claims in
4 the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management
6 of this action that would preclude its maintenance as a class action.

7 65. Because such common questions predominate over any individualized issues and/or
8 questions affecting only individual members, class resolution is superior to other methods
9 for fair and efficient adjudication.

10 **IV. CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING**
12 **SYSTEMS AND/OR DOES: Failure to Pay All Straight Time Wages**

13 66. Plaintiff and those similarly situated Class members hereby incorporate by reference each
14 and every other paragraph in this Complaint herein as if fully plead.

15 67. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and those
16 similarly situated for all hours worked.

17 68. It is fundamental that an employer must pay its employees for all time worked. California
18 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
19 Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section
20 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section
21 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only
22 permits deductions from wages when the employer is required or empowered to do so by
23 state or federal law or when the deduction is expressly authorized in writing by the
24 employee for specified purposes that do not have the effect of reducing the agreed upon
25 wage.

26 69. Plaintiff and those similarly situated Class members were employed by NCI GROUP, INC;
27 DBA NCI BUILDING SYSTEMS and/or DOES at all relevant times. NCI GROUP, INC;
28 DBA NCI BUILDING SYSTEMS and/or DOES were required to compensate Plaintiff for

1 all hours worked and were prohibited from making deductions that had the effect of
2 reducing the agreed upon wage.

3 70. Defendants and/or DOES have a continuous and consistent policy of clocking-out Plaintiff
4 and those similarly situated for a thirty (30) minute meal period, even though Plaintiff and
5 all members of the Class work through their meal periods. Thus, NCI GROUP, INC; DBA
6 NCI BUILDING SYSTEMS and/or DOES do not pay Plaintiff and each and every member
7 of the Class for all time worked each and every day they work without a meal period and
8 have time deducted.

9 71. Plaintiff and those similarly situated Class members are informed and believe and thereon
10 allege that NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES breached
11 the legal duty to pay full wages to Plaintiff by deducting a portion of the wages earned
12 when Plaintiff's and the Class members' actual time records indicate that a meal period
13 was not taken. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES did
14 not make reasonable efforts to determine whether the time deducted was actually worked
15 as reported by Plaintiff and Class members. NCI GROUP, INC; DBA NCI BUILDING
16 SYSTEMS and/or DOES, without a reasonable basis, presumed that actual reported hours
17 had not been accurately reported. The conduct complained of is a form of what is
18 sometimes called "dinging," "shaving," or "scrubbing" and is prohibited by law.

19 72. Defendants and/or DOES have a continuous and consistent policy of not paying Plaintiff
20 and those similarly situated for all time worked, including before Plaintiff and those
21 similarly situated clock in for work shifts and after they clock out after work shifts.

22 73. Defendants and/or DOES have a continuous and consistent policy of shaving the time
23 Plaintiff and those similarly situated work (referred to as "time shaving").

24 74. Thus, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES shave/steal
25 earned wages from Plaintiff and each and every member of the Class each and every day
26 they work. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have not
27 paid Plaintiff and the members of the Class all straight time wages owed.
28

75. Plaintiff and the Class members are informed and believe and thereon allege that as a direct result of Defendants' and/or DOES' uniform policies and/or practices, Plaintiff and the Class members have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses and attorneys' fees in seeking to compel NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts, according to proof at trial.

76. As a direct result of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' policy of illegal wage theft, Plaintiff and those similarly situated have been damaged in an amount to be proven at trial.

77. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

SECOND CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING SYSTEMS AND/OR DOES: Failure to Pay All Overtime Wages

78. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

79. It is fundamental that an employer must pay its employees for all time worked. California Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages. Labor Code section 222 prohibits the withholding of part of a wage. Labor Code section 223 prohibits the pay of less than a statutory or contractual wage scale. Labor Code section 1197 prohibits the payment of less than the minimum wage. Labor Code section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

80. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week.

81. Plaintiff and those similarly situated Class members were employed by NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES at all relevant times. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES were required to compensate Plaintiff for all overtime hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

82. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to pay for the overtime that was due, pursuant to IWC Wage Order No. 7-2001, item 3(A).

83. Plaintiff and the Class members are informed and believe and thereon allege that as a direct result of Defendants' and/or DOES' uniform policies and/or practices, Plaintiff and the Class members have suffered, and continue to suffer, substantial unpaid overtime wages, and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to compel NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES to fully perform their obligations under state law, all to their respective damage in amounts according to proof at time of trial. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class members. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES acted with malice or in conscious disregard of Plaintiff's and the Class Member's rights. In addition to compensation, Plaintiff is also entitled to any penalties allowed by law.

84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

THIRD CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING SYSTEMS AND/OR DOES: Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512, IWC Wage Order No. 7-2001(11); Cal. Code Regs., tit. 8, § 11090)

85. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

86. Under California Labor Code section 512 and IWC Wage Order No. 7, no employer shall employ any person for a work period of more than five (5) hours without providing a meal

1 period of not less than thirty (30) minutes. During this meal periods of not less than thirty
 2 (30) minutes, the employee is to be completely free of the employer's control and must not
 3 perform any work for the employer. If the employee does perform work for the employer
 4 during the thirty (30) minute meal period, the employee has not been provided a meal
 5 period in accordance with the law. Also, the employee is to be compensated for any work
 6 performed during the thirty (30) minute meal period.

7 87. In addition, an employer may not employ an employee for a work period of more than ten
 8 (10) hours per day without providing the employee with another meal period of less than
 9 thirty (30) minutes.

10 88. Under California Labor Code section 226.7, if the employer does not provide an employee
 11 a meal period in accordance with the above requirements, the employer shall pay the
 12 employee one (1) hour of pay at the employee's regular rate of compensation for each
 13 workday that the meal period is not provided.

14 89. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to provide
 15 thirty (30) minute, uninterrupted meal periods to its Non-Exempt Employees who worked
 16 for work periods of more than five (5) consecutive hours. As such, NCI GROUP, INC;
 17 DBA NCI BUILDING SYSTEMS and/or DOES non-exempt employees were required to
 18 work over five (5) consecutive hours at a time without being provided a thirty (30) minute
 19 uninterrupted meal period within that time.

20 90. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to provide
 21 thirty (30) minute, uninterrupted meal periods to its Non-Exempt Employees for every five
 22 (5) continuous hours worked.

23 91. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or DOES' business model is
 24 such that Non-Exempt Employees were assigned too much work and insufficient help due
 25 to chronic understaffing to be able to take meal periods. Thus, Non-Exempt Employees are
 26 not able to take meal periods.

27 92. Throughout the statutory period, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
 28

1 and/or DOES had a pattern and practice of assigning too much work to be completed in
2 too short of time frames, resulting in Plaintiff and those similarly situated not being able to
3 take meal periods.

4 93. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES would not permit
5 Plaintiff and the Class to take 30-minute meal periods unless specifically scheduled by
6 Defendants and/or DOES or unless Plaintiff and the Class were expressly told to by
7 Defendants and/or DOES. This routinely resulted in Plaintiff and the Class members not
8 being able to take a meal period, if at all, until after the fifth hour.

9 94. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES did not have a policy
10 of providing a second meal period before the end of the tenth hour.

11 95. Failing to provide compensation for such unprovided or improperly provided meal periods,
12 as alleged above, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES
13 willfully violated the provisions of Labor Code sections 226.7, 512, and IWC Wage Order
14 No. 7.

15 96. As a result of the unlawful acts of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
16 and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium
17 wages, in amounts to be determined at trial, and are entitled to recovery of such amounts,
18 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code
19 section 226.7, and IWC Wage Order No. 7-2001. Plaintiff and the Class he seeks to
20 represent did not willfully waive their right to take meal periods through mutual consent
21 with NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES.

22 97. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
23 below.

24 **FOURTH CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING**
25 **SYSTEMS AND/OR DOES: Failure to Authorize and Permit Rest Periods (Lab. Code §**
26 **226.7; IWC Wage Order No. 7-2001(12); Cal. Code Regs. Title 8 § 11090)**

27 98. Plaintiff and those similarly situated Class members hereby incorporate by reference each
28 and every other paragraph in this Complaint herein, as if fully plead.

99. Under IWC Wage Order No. 7, every employer shall authorize and permit all employees

1 to take rest periods, “[t]he authorized rest period time shall be based on the total hours
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
3 fraction thereof.” IWC Wage Order 7-2001(12). The time spent on rest periods “shall be
4 counted as hours worked for which there shall be no deduction from wages.” *Id.*

5 100. Under California Labor Code section 226.7, if the employer does not provide an employee
6 a rest period in accordance with the above requirements, the employer shall pay the
7 employee one (1) hour of pay at the employee’s regular rate of compensation for each
8 workday that the meal period is not provided.

9 101. At all relevant times, Defendants and/or DOES failed to authorize and/or permit rest period
10 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
11 per four (4) hours or major fraction thereof.

12 102. In the alternative, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES
13 business model was such that Non-Exempt Employees were assigned too much work with
14 insufficient help due to chronic understaffing whereby Plaintiff and the Class had to work
15 through their rest periods.

16 103. Throughout the statutory period, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
17 and/or DOES had a pattern and practice of assigning too much work to be completed in
18 too short of time frames, resulting in Plaintiff and those similarly situated not being able to
19 take rest periods.

20 104. As a result of the unlawful acts of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
21 and/or DOES, Plaintiff and the Class he seeks to represent have been deprived of premium
22 wages, in amounts to be determined at trial, and are entitled to recovery of such amounts,
23 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code
24 section 226.7, and IWC Wage Order No. 7-2001.

25 105. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
26 below.

27 ///

28

FIFTH CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING SYSTEMS AND/OR DOES: Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 7; Cal. Code Regs., Title 8, § 11040)

106. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

107. Labor Code section 226 subdivision (a) requires Defendants and/or DOES to, inter alia, itemize in wage statements and accurately report the total hours worked and total wages earned. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a), on each and every wage statement provided to Plaintiff ARTURO GONZALEZ and members of the proposed Class.

108. Labor Code section 1174 requires NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES to maintain and preserve, in a centralized location, records showing the daily hours worked by and the wages paid to its employees. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have knowingly and intentionally failed to comply with Labor Code section 1174. The failure of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, and each of them, to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

109. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to maintain accurate time records - as required by IWC Wage Order No. 7-2001(7), and Cal. Code Regs., Title 8 section 11090 - showing, among other things, when the employee begins and ends each work period, the total daily hours worked in itemized wage statements, total wages, bonuses and/or incentives earned, and all deductions made.

110. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES have knowingly and intentionally failed to provide Plaintiff and the Class members with accurate itemized wage statements which show: “(1) gross wages earned, (2) total hours worked by the employee, . . . (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 her 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[.]” Labor Code section 226(a).

111. As a direct result of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES unlawful acts, Plaintiff and the Class he intends to represent have been damaged and are entitled to recovery of such amounts, plus interest thereon, attorneys’ fees, and costs, pursuant to Labor Code section 226.

112. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described below.

SIXTH CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING SYSTEMS AND/OR DOES: Failure to Pay All Wages Due at the Time of Termination from Employment (Lab. Code §§ 201-203)

113. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

114. Plaintiff ARTURO GONZALEZ terminated his employment with NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES.

115. Whether Plaintiff ARTURO GONZALEZ voluntarily or involuntarily terminated his employment with NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, Defendants and/or DOES did not timely pay him straight time wages owed at the time of his termination.

116. Whether Plaintiff ARTURO GONZALEZ voluntarily or involuntarily terminated his employment with NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES, Defendants and/or DOES did not timely pay his overtime wages owed at the time of his termination.

1 117. Whether Plaintiff ARTURO GONZALEZ voluntarily or involuntarily terminated his
2 employment with NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES,
3 Defendants and/or DOES did not timely pay his meal and/or rest period premiums owed at
4 the time of his termination.

5 118. Numerous members of the Class are no longer employed by NCI GROUP, INC; DBA NCI
6 BUILDING SYSTEMS and/or DOES. They were either fired or quit NCI GROUP, INC;
7 DBA NCI BUILDING SYSTEMS's and/or DOES' employ. NCI GROUP, INC; DBA NCI
8 BUILDING SYSTEMS and/or DOES did not pay all timely wages owed at the time of
9 their termination. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES did
10 not pay all premium wages owed at the time of their termination.

11 119. Labor Code section 203 provides that, if an employer willfully fails to pay, without
12 abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5,
13 any wages of an employee who is discharged or who quits, the wages of the employee shall
14 continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or
15 until an action therefore is commenced.

16 120. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failed to pay Plaintiff
17 ARTURO GONZALEZ a sum certain at the time of his termination or within seventy-two
18 (72) hours of his resignation, and have failed to pay those sums for thirty (30) days
19 thereafter. Pursuant to the provisions of Labor Code section 203, Plaintiff ARTURO
20 GONZALEZ is entitled to a penalty in the amount of his daily wage, multiplied by thirty
21 (30) days.

22 121. When Plaintiff and those members of the Class who are former employees of NCI GROUP,
23 INC; DBA NCI BUILDING SYSTEMS and/or DOES separated from Defendants' and/or
24 DOES' employ, Defendants and/or DOES willfully failed to pay all straight time wages,
25 overtime wages, meal period premiums, and/or rest period premiums owed at the time of
26 termination.

27 122. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failure to pay said
28

1 wages to Plaintiff ARTURO GONZALEZ and members of the Class he seeks to represent,
2 was willful in that NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES
3 and each of them knew the wages to be due, but failed to pay them.

4 123. As a consequence of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS's and/or
5 DOES' willful conduct in not paying wages owed at the time of separation from
6 employment, Plaintiff ARTURO GONZALEZ and members of the proposed Class are
7 entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203,
8 together with interest thereon and attorneys' fees and costs.

9 124. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
10 below.

11 **SEVENTH CAUSE OF ACTION AGAINST NCI GROUP, INC; DBA NCI BUILDING**
12 **SYSTEMS AND/OR DOES: Violation of Unfair Competition Law (California Bus. & Prof.**
Code, § 17200, et seq.)

13 125. Plaintiff and those similarly situated Class members hereby incorporate by reference each
14 and every other paragraph in this Complaint herein as if fully plead.

15 126. NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES failure to pay all
16 straight time and overtime wages earned, failure to provide compliant meal and/or rest
17 breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records,
18 failure to pay all wages due at time of termination, as alleged herein, constitutes unlawful
19 activity prohibited by California Business and Professions Code section 17200, et seq.

20 127. The actions of NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES in
21 failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged
22 herein, constitutes false, unfair, fraudulent and deceptive business practices, within the
23 meaning of California Business and Professions Code section 17200, et seq.

24 128. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
25 practices in order to prevent future damage, for which there is no adequate remedy at law,
26 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as
27 members of the general public actually harmed and as a representative of all others subject
28 to NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES unlawful acts and

1 practices.

2 129. As a result of their unlawful acts, NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
3 and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff
4 and the proposed Class he seeks to represent. NCI GROUP, INC; DBA NCI BUILDING
5 SYSTEMS and/or DOES should be enjoined from this activity and made to disgorge these
6 ill-gotten gains and restore Plaintiff and the members of the proposed Class pursuant to
7 Business and Professions Code section 17203. Plaintiff is informed and believes, and
8 thereon alleges, that Defendants and/or DOES are unjustly enriched through their policy
9 of not all wages owed to Plaintiff and members of the proposed Class.

10 130. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
11 proposed class are prejudiced NCI GROUP, INC; DBA NCI BUILDING SYSTEMS
12 and/or DOES unfair trade practices.

13 131. As a direct and proximate result of the unfair business practices of NCI GROUP, INC;
14 DBA NCI BUILDING SYSTEMS and/or DOES, and each of them, Plaintiff, individually
15 and on behalf of all employees similarly situated, are entitled to equitable and injunctive
16 relief, including full restitution and/or disgorgement of all wages and premium pay which
17 have been unlawfully withheld from Plaintiff and members of the proposed Class as a result
18 of the business acts and practices described herein and enjoining NCI GROUP, INC; DBA
19 NCI BUILDING SYSTEMS and/or DOES from engaging in the practices described
20 herein.

21 132. The illegal conduct alleged herein is continuing, and there is no indication that NCI
22 GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES will cease and desist from
23 such activity in the future. Plaintiff alleges that if NCI GROUP, INC; DBA NCI
24 BUILDING SYSTEMS and/or DOES are not enjoined from the conduct set forth in this
25 Complaint, they will continue the unlawful activity discussed herein.

26 133. Plaintiff further requests that the Court issue a preliminary and permanent injunction
27 prohibiting NCI GROUP, INC; DBA NCI BUILDING SYSTEMS and/or DOES from
28

1 continuing to not pay Plaintiff and the members of the proposed Class overtime wages as
2 discussed herein.

3 134. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
4 below.

5 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT NCI GROUP, INC; DBA NCI**
6 **BUILDING SYSTEMS AND/OR DOES: Violations of the Private Attorneys General Act of**
7 **2004 (“PAGA”) (Labor Code §2698 et seq.)**

8 135. Plaintiff and those similarly situated Class members hereby incorporate by reference each
9 and every other paragraph in this Complaint herein as if fully plead.

10 136. Plaintiff, by virtue of his employment with Defendant, and Defendant’s failure to provide
11 meal and rest periods, overtime compensation, all wages for all work performed at the
12 statutory minimum agreed upon rate, and all wages due at termination, is an aggrieved
13 employee with standing to bring an action under the Private Attorney General Act
14 (“PAGA”). Plaintiff, as representative of the people of the State of California, will seek
15 any and all penalties otherwise capable of being collected by the Labor Commission and/or
16 the Department of Labor Standards Enforcement (DLSE). This includes each of the
17 following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a)
18 applies to any alleged violation of the following provisions: Sections 201 through 203, 204,
19 205.5, 221, 222, 223, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

20 137. Plaintiff is informed and believes that Defendant has violated and continues to violate
21 provisions of the California Labor Code and applicable Wage Orders related to meal and
22 rest periods, overtime compensation, wages for all work performed, all wages due at
23 termination, and reimbursement for expenses incurred during employment.

24 138. Plaintiff, as personal representative of the general public, will and does seek to recover any
25 and all penalties for each and every violation shown to exist or to have occurred during the
26 one-year period of filing this action, in an amount according to proof, as to those penalties
27 that are otherwise only available to public agency enforcement actions. Funds recovered
28 will be distributed in accordance with PAGA, with at least 75% of the penalties recovered

1 being reimbursed to the State of California and the Labor and Workforce Development
2 Agency (LWDA).

3 **V. PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment as follows:

- 5 A. That the Court determine that this action may be maintained as a class action;
- 6 B. For compensatory damages, in an amount according to proof at trial, with interest
7 thereon;
- 8 C. For economic and/or special damages in an amount according to proof with interest
9 thereon;
- 10 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
11 with interest thereon;
- 12 E. For compensation for all time worked;
- 13 F. For compensation for not being provided paid rest breaks;
- 14 G. For compensation for not being provided paid meal periods;
- 15 H. For damages and/or monies owed for failure to comply with itemized employee wage
16 statement provisions;
- 17 I. For all waiting time penalties owed;
- 18 J. That Defendants be found to have engaged in unfair competition in violation of sections
19 17200 et seq. of the California Business and Professions Code;
- 20 K. That Defendants be ordered and enjoined to make restitution to the Class due to their
21 unfair competition, including disgorgement of their wrongfully withheld wages
22 pursuant to California Business and Professions Code sections 17203 and 17204;
- 23 L. That an order of specific performance of all penalties owed be issued under Business
24 and Professions Code sections 17202;
- 25 M. That Defendants be enjoined from continuing the illegal course of conduct, alleged
26 herein;
- 27 N. That Defendants further be enjoined to cease and desist from unfair competition in
28

1 violation of section 17200 et seq. of the California Business and Professions Code;

2 O. That Defendants be enjoined from further acts of restraint of trade or unfair
3 competition;

4 P. For attorneys' fees;

5 Q. For interest accrued to date;

6 R. For penalties for each violation of the Labor Code Private Attorneys General Act
7 of 2004 ("PAGA");

8 S. For costs of suit and expenses incurred herein; and

9 T. For any such other and further relief as the Court deems just and proper.

10
11 Dated: January 24, 2020

MARA LAW FIRM, PC

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14 _____
15 David Mara, Esq.
16 Jamie Serb, Esq.
17 Nikki Trenner, Esq.
18 Representing Plaintiff ARTURO GONZALEZ
19 on behalf of himself, all others similarly situated,
20 and on behalf of the general public.
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