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MALLISON_&_MARTINEZ

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THE SUPERIOR COURT
By Alicia Espinoza, DeputyCASE NUMBER:
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1 Stan S. Mallison (SBN 184191)
Hector R. Martinez (SBN 206336)
2 Marco A. Palau (SBN 242340)
Joseph D. Sutton (SBN 269951)
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6 Attorneys for Plaintiffs and the State of California,
pursuant to the Private Attorneys General Act

SUPERIOR COURT OF CALIFORNIA**IN AND FOR THE COUNTY OF ALAMEDA**

9
10 **MOHAMED MALLEM**, on behalf of himself,
all other similarly situated individuals and the
11 State of California; and **ALI BOUDJEMA**, on
behalf of the State of California and other
current or former employees,

12 Plaintiffs,

13 vs.

14 **C&C SECURITY PATROL, INC.**, a
15 California Corporation, and **DOES 1** through
20,

17 Defendant.
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Case No.

CLASS ACTION COMPLAINT FOR:

1. **FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194)**
2. **FAILURE TO PAY OVERTIME (LABOR CODE §510);**
3. **FAILURE TO REIMBURSE WORK EXPENSES (LABOR CODE §2802);**
4. **REST PERIOD VIOLATIONS (LABOR CODE § 226.7);**
5. **MEAL PERIOD VIOLATIONS (LABOR CODE § 226.7);**
6. **WAITING TIME PENALTIES OR WAGES (LABOR CODE § 203);**
7. **WAGE STATEMENT PENALTIES, (LABOR CODE § 226);**
8. **VIOLATION OF UCL (BUS. & PROF. CODE §§ 17200 *et seq.*); and**
9. **PAGA PENALTIES, (LABOR CODE § 2699, *et seq.*)**

COMPLAINT- DEMAND FOR JURY TRIAL

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6. WAITING TIME PENALTIES OR WAGES (LABOR CODE § 203);
7. WAGE STATEMENT PENALTIES, (LABOR CODE § 226);
8. VIOLATION OF UCL (BUS. & PROF. CODE §§ 17200 *et seq.*); and
9. PAGA PENALTIES, (LABOR CODE § 2699, *et seq.*)

I. INTRODUCTION

1. Plaintiffs MOHAMED MALLEM and ALI BOUDJEMA (hereinafter "PLAINTIFFS" or "PLAINTIFF") bring this action against C&C SECURITY PATROL, INC. and DOES 1 through 20 (collectively "DEFENDANTS") for failure to pay wages owed, failure to provide accurate wage statements, failure to provide proper rest and meal periods, and for waiting time penalties. This action is brought on behalf of the State of California to enforce the State's labor laws and to collect penalties arising from DEFENDANTS' violations of the California Labor Code. The allegations in this complaint are made on the basis of PLAINTIFFS' personal knowledge, and on information and belief based on a reasonable investigation under the circumstances.

2. DEFENDANTS engage in a pattern of wage theft through the enforcement of the following unlawful practices: (a) failure to compensate workers at the required premium rate set forth in Labor Code section 510; (b) failing to compensate workers for all hours worked; (c) failing to keep accurate records of the start and end of work periods, meal periods and rest periods; (d) failing to provide required rest and meal periods or statutory compensation in lieu thereof; (e) failing to provide accurate wage statements; and (f) unlawfully deducting wages for uniforms and failing to reimburse for expenses. These practices and resulting violations are willful.

3. As a result of the violations described herein, PLAINTIFF MALLEM brings this class action on behalf of a Class of security guards employed by DEFENDANTS in California. PLAINTIFFS also bring this action as a non-class representative action to recover penalties pursuant to the California Private Attorneys General . PLAINTIFFS have satisfied PAGA's pre-filing requirements and, by operation of law, have obtained standing to act on the State's behalf. Although the PAGA claim is representative in nature, class certification is not required in order to obtain workforce-wide relief under PAGA.

II. JURISDICTION AND VENUE

4. This case is subject to the jurisdiction of this court pursuant to the California Labor Code, California Business and Professions Code, and California Code of Civil Procedure. DEFENDANTS are entities, partnerships, businesses and persons who reside and conduct business

1 in Alameda County.

2 5. Venue is proper in this judicial district because DEFENDANTS maintain their principal
3 California offices in Alameda County, California. In addition, venue in Alameda County is proper
4 because DEFENDANTS have their address in Alameda, operate in Alameda, and because many of
5 the alleged violations arose in Alameda.

6
7 **III. PARTIES**

8 **PLAINTIFF**

9 6. MOHAMED MALLEM ("MALLEM") is an individual residing in California
10 who was employed by DEFENDANTS as a non-exempt security guard in California. MALLEM
11 was employed by DEFENDANTS within all times relevant and was denied proper compensation
12 for all hours worked and proper rest and meal periods or compensation in lieu thereof.
13 DEFENDANTS failed to compensate MALLEM for all hours worked at the required minimum
14 rate, and failed to compensate MALLEM at the required overtime and doubletime rates.
15 MALLEM performed work in cities with minimum wage rates that exceed California's minimum
16 rate, including San Francisco. DEFENDANTS deducted wages from MALLEM for work
17 expenses and failed to reimburse MALLEM for out-of-pocket work expenses. DEFENDANTS
18 failed to implement a timekeeping system to record accurately when the start and end time of work
19 periods, meal periods and rest periods. As a result of the failures described above, MALLEM'S
20 wage statements were inaccurate and incomplete as to the total hours worked, wages earned and
21 applicable rates of pay. Upon leaving DEFENDANTS' employ, MALLEM was not paid all wages
22 owed, including without limitation, all minimum, overtime, double-time, and rest and meal period
23 wages owed. MALLEM is an aggrieved employee and has suffered injury in fact and lost money
24 or property.

25 7. ALI BOUDJEMA ("BOUDJEMA") is an individual residing in California who
26 was employed by DEFENDANTS as a non-exempt security guard in California. BOUDJEMA was
27 employed by DEFENDANTS within the PAGA period and was denied proper compensation for
28 all hours worked and proper rest and meal periods or compensation in lieu thereof.

1 DEFENDANTS failed to compensate BOUDJEMA for all hours worked at the required minimum
2 rate, and failed to compensate BOUDJEMA at the required overtime and doubletime rates.
3 BOUDJEMA performed work in cities with minimum wage rates that exceed California's
4 minimum rate, including San Francisco. DEFENDANTS deducted wages from BOUDJEMA for
5 work expenses and failed to reimburse BOUDJEMA for out-of-pocket work expenses.
6 DEFENDANTS failed to implement a timekeeping system to record accurately when the start and
7 end time of work periods, meal periods and rest periods. As a result of the failures described
8 above, BOUDJEMA'S wage statements were inaccurate and incomplete as to the total hours
9 worked, wages earned and applicable rates of pay. Upon leaving DEFENDANTS' employ,
10 BOUDJEMA was not paid all wages owed, including without limitation, all minimum, overtime,
11 double-time, and rest and meal period wages owed. BOUDJEMA is an aggrieved employee and
12 has suffered injury in fact and lost money or property.

13 **DEFENDANTS**

14 8. C&C SECURITY PATROL, INC. ("C&C") is a California corporation located in
15 Union City, CA. C&C Has listed addresses at 1684 Decoto Rd., Suite 161, Union City, CA 94587,
16 and 4615 Enterprise Common, Fremont, CA 94538. C&C has employed PLAINTIFFS and current
17 or former employees during the relevant period, and has caused the violations described in this
18 complaint.

19 9. PLAINTIFFS are ignorant of the true names or capacities of the Defendants sued
20 herein under the fictitious names Does 1 through 20. Plaintiffs will amend this complaint to allege
21 the true names or capacities of these Doe Defendants once they have been ascertained.
22 PLAINTIFFS allege that each Defendant in this complaint, whether named fictitiously or by true
23 name, is responsible in some manner for the occurrences herein alleged under one or more of the
24 following theories: as joint employers; as a single or integrated enterprise; as the agent, employee,
25 coconspirator, business affiliate, subsidiary, parent entity, owner and/or joint venturer of each
26 other Defendant, acting within the scope thereof; and/or as a person working on behalf of the
27 employers who violated or caused the violations of the California Labor Code and Wage Order
28 provisions alleged herein. On information and belief PLAINTIFFS further assert that the damages

1 herein alleged were actually and proximately caused by each Defendant's conduct.

2 **IV. FACTUAL ALLEGATIONS**

3 10. DEFENDANTS willfully failed to compensate PLAINTIFFS and, on information
4 and belief, other current or former non-exempt employees for all "hours worked," within the
5 meaning of the applicable wage order(s), at the required rates of pay. This failure to compensate is
6 a consequence of the following illegal compensation and labor practices that DEFENDANTS
7 willfully enforce against workers, including PLAINTIFFS:

- 8 a. Failing to pay employees at the required minimum rate for all hours worked.
- 9 b. Failing to pay employees for travel time between worksites.
- 10 c. Refusing to pay employees for all hours worked in excess of eight hours in a
11 workday at the required premium rates of pay.
- 12 d. Refusing to pay employees for all hours worked in excess of 12 hours in one
13 day at the required premium rate of pay.
- 14 e. Refusing to pay workers for time during which workers are subject to
15 employer control, including mandatory travel time that occurs after the first
16 location where the worker's presence is required, in violation of the wage
17 orders and Labor Code §§ 510 and 1194.
- 18 f. Refusing to pay workers for off-the-clock work that is required or
19 knowingly suffered or permitted, in violation of the wage orders and Labor
20 Code §§ 510 and 1194.
- 21 g. Failing to accurately record the total "hours worked" and the time when
22 workers begin and end each work period and meal period, in violation of the
23 wage orders.
- 24 h. Refusing to pay workers premium rest and meal period wages when rest and
25 meal periods are not properly provided, in violation of the wage orders and
26 Labor Code §§ 226.7 and 512.
- 27 i. Failing to authorize and permit the requisite number of rest periods per shift,
28 in violation of the wage orders and Labor Code § 226.7.

- 1 j. Failing to schedule and relieve employees of all duty for timely meal breaks
2 of at least 30, uninterrupted minutes, and failing to provide second meal
3 breaks for shifts greater than 10 hours, in violation of the wage orders and
4 Labor Code §§ 226.7 and 512.
- 5 k. Failing to provide wage statements that contain accurate information as to
6 wages earned, hours worked and rates of pay, in violation of Labor Code §
7 226.
- 8 l. Failing to pay all wages owed timely upon termination of the employment
9 relationship, in violation of Labor Code §§ 201-203.

10 2. Under *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, DEFENDANTS'
11 failure to maintain accurate records will shift the burden of proof to DEFENDANTS.

12 3. Pursuant to California Business and Professions Code § 17208, the statute of
13 limitations for an action to recover wages at issue is four years.

14 **V. CLASS ALLEGATIONS**

15 11. PLAINTIFF MALLEM brings this action on behalf of himself and all others
16 pursuant to Section 382 of the California Code of Civil Procedure, on the basis that there is a well-
17 defined community of interest in the litigation and the proposed class is easily ascertainable.
18 PLAINTIFF MALLEM seeks to represent the following Class:

19 All non-exempt security guards employed by DEFENDANTS at any time
20 between four years prior to the filing of this complaint and the final
21 disposition of this action.

22 12. On information and belief, the injury and loss of money to Class Members is in the
23 millions of dollars. PLAINTIFFS and the Class were regularly subjected to the policy violations
24 described in this Complaint. On information and belief, the legal and factual issues are common to
25 the Class and affect all Class Members. PLAINTIFF MALLEM reserves the right to amend or
26 modify the class description with greater specificity or further division into subclasses, as well as
27 to limit the class or subclasses to particular issues, as warranted. The PAGA claim is an
28 enforcement claim for penalties on behalf of the State of California and does not require class

1 certification, pursuant to California Supreme Court authority.

2 **A. Numerosity**

3
4 13. The potential members of the Class as defined are so numerous that joinder of all of
5 them is impracticable. While the precise number of Class Members has not been determined at
6 this time, PLAINTIFFS are informed and believes that the Class is comprised of more than one
7 hundred individuals.

8 14. On information and belief, PLAINTIFFS allege that DEFENDANTS' employment
9 records will provide information as to the number and location of all Class Members.

10 **B. Commonality & Predominance**

11
12 15. There are questions of law and fact that are common to the Class and predominate
13 over individualized questions. These common questions of law and fact include, without
14 limitation:

- 15 a. Whether DEFENDANTS violated the rights of Class Members to receive minimum
16 wage for all hours worked.
- 17 b. Whether Class Members are entitled to compensation for travel between job sites.
- 18 c. Whether DEFENDANTS violated the law by failing to pay Class Members
19 overtime compensation for hours in excess of eight in one workday.
- 20 d. Whether DEFENDANTS violated the law by failing to pay Class Members double-
21 time compensation for hours in excess of 12 in one day.
- 22 e. Whether DEFENDANTS unlawfully deducted wages from Class Members, and
23 whether DEFENDANTS failed to reimburse Class Members for work expenses,
24 such as mileage, tolls and other expenses.
- 25 f. Whether DEFENDANTS violated the Labor Code and Wage Orders by enforcing a
26 rest period policy that did not authorize and permit statutory rest periods.
- 27 g. Whether DEFENDANTS violated the Labor Code and Wage Orders by failing to
28 pay premium rest period wages in lieu of rest periods.

- 1 h. Whether DEFENDANTS violated the Labor Code and Wage Orders by maintaining
2 a policy or practice of not providing meal periods or second meal periods for shifts
3 greater than 10 and 12 hours.
- 4 i. Whether DEFENDANTS.
- 5 j. Whether DEFENDANTS violated the Labor Code and Wage Orders by enforcing a
6 policy or practice of not maintaining accurate records of the start and stop of shifts
7 or meal periods.
- 8 k. Whether DEFENDANTS violated the Labor Code and Wage Orders by maintaining
9 a policy or practice of failing to state accurately the name and address of the
10 employer, the gross and net wages earned, the hours worked, and all applicable
11 rates of pay, including hourly rates, and premium rest and meal period rates and
12 wages.
- 13 l. Whether DEFENDANTS violated the California Labor Code and/or IWC Wage
14 Orders by maintaining a policy or practice of failing to pay all wages owed (i.e.,
15 wages for all "hours worked," premium rest and meal period wages, and vested
16 vacation wages) to employees timely upon the termination of the employment
17 relationship.
- 18 m. Whether DEFENDANTS violated Sections 17200, *et seq.* of the Business and
19 Professions Code by the actions alleged in this complaint.
- 20 n. Whether PLAINTIFFS and other Class Members are entitled to damages,
21 restitution, statutory penalties, premium wages, declaratory, injunctive and
22 declaratory relief, attorneys' fees, interest, and costs, and other relief pursuant to
23 California Labor Code and Wage Orders, and Business and Professions Code §§
24 17200, *et seq.*

25 There are no individualized factual or legal issues for the court to resolve other than the
26 application of a formula to calculate each Class Members' damages.
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1 VI. CAUSES OF ACTION

2 FIRST CAUSE OF ACTION

3 FAILURE TO PAY STATUTORY OR AGREED UPON MINIMUM WAGE
4 (Violation of Cal. Lab. Code §§ 200 *et seq.*, 1197, 1194(a), 1194.2 & Wage Order(s))

5 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

6 16. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

7 17. California Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:

8 The minimum wage for employees fixed by the commission is the minimum
9 wage to be paid to employees, and the payment of a less wage than the
10 minimum so fixed is unlawful.

11 18. The applicable minimum wage set by the IWC in the Wage Orders was \$6.75 per
12 hour effective January 1, 2002. The IWC raised this rate to \$7.50 per hour effective January 1,
13 2007, and \$8.00 per hour effective January 1, 2008. However, where the employee is required to
14 supply tools and equipment, the minimum wage rate under the IWC wage orders is doubled.

15 19. The Minimum Wage provisions of California Labor Code are enforceable by
16 private civil action pursuant to California Labor Code § 1194 and California Business and
17 Professions Code §§ 17200 *et seq.* Labor Code section 1194(a) states:

18 Notwithstanding any agreement to work for a lesser wage, any employee receiving
19 less than the legal minimum wage or the legal overtime compensation applicable to
20 the employee is entitled to recover in a civil action the unpaid balance of the full
21 amount of this minimum wage or overtime compensation, including interest thereon,
22 reasonable attorney's fees and costs of suit.

23 20. Pursuant to California Labor Code § 1194.2, any action for minimum wage
24 incorporates the applicable wage order of the IWC and is subject to liquidated damages for unpaid
25 wages. California Labor Code § 1194.2 provides that:

26 In any action under Section 1194 ... to recover wages because of the payment of a
27 wage less than the minimum wages fixed by an order of the commission, an employee
28 shall be entitled to recover liquidated damages in an amount equal to the wages
unlawfully unpaid and interest thereon.

21. PLAINTIFF and, on information and belief, other current or former employees are
not compensated for mandatory travel that occurs after the first location where the employee's

1 presence is required.

2 22. DEFENDANTS failed to keep accurate records of employee time, shifting the
3 burden to DEFENDANTS to disprove reasonable estimates of the amount of time that is unpaid.
4 *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 727.

5 23. PLAINTIFF and, on information and belief, other current or former employees are
6 owed wages for the violations above. DEFENDANTS failed to pay said wages when due, as
7 required by Labor Code § 204, and have not been paid them to date. The violation of California's
8 minimum wage laws is substantial and occurred regularly.

9 24. PLAINTIFF is entitled to payment of wages owed under California Labor Code §§
10 1197, 1194(a) and 1194.2 and the applicable wage orders.

11 25. The minimum wage violations described in this complaint serve as predicates for
12 PAGA penalties, which are payable to the State of California and the workforce, pursuant to Labor
13 Code § 2699, *et seq.* Pursuant to Labor Code §§ 558 and 1197.1, moreover, an employer or other
14 person who causes a wage violation is liable for wages payable to the affected worker as a civil
15 penalty under PAGA.

16 26. WHEREFORE, PLAINTIFF requests relief as described herein and below,
17 including unpaid wages, interest, attorney's fees and cost of suit.

18 SECOND CAUSE OF ACTION

19 FAILURE TO PAY OVERTIME PREMIUM WAGES
20 (Violation of Labor Code §§ 200, *et seq.*, 510, 1194 & Wage Order(s))

21 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

22 27. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

23 28. Labor Code § 510(a) establishes the eight (8) hour workday and 40 hour workweek,
24 and provides that work in excess of eight (8) hours in one day or 40 hours in one week is to be
25 compensated at one and one-half (1 ½) the regular rate of pay ("overtime rate"). The wage orders,
26 which are authorized under California Labor Code § 1185 and apply in this case, further provide
27 that work in excess of 12 hours in a workday or eight hours on the seventh consecutive workday is
28

1 to be compensated at the rate of twice the regular rate of pay ("doubletime rate").

2 29. DEFENDANTS violated California Labor Code § 510 and the applicable wage
3 orders (or caused the violations) by subjecting employees to employer control, or knowingly
4 suffering or permitting them to work, in excess of the statutory overtime thresholds, without
5 paying the applicable premium rate.

6 30. PLAINTIFF may enforce these provisions pursuant to Labor Code § 1194(a) and
7 Business and Professions Code §§ 17200 *et seq.*

8 31. California Labor Code § 1194(a) states:

9 Notwithstanding any agreement to work for a lesser wage, any employee receiving
10 less than the legal minimum wage or the legal overtime compensation applicable
11 to the employee is entitled to recover in a civil action the unpaid balance of the full
12 amount of this minimum wage or overtime compensation, including interest
13 thereon, reasonable attorney's fees and costs of suit.

14 32. PLAINTIFF and, on information and belief, other current or former employees are
15 entitled to wages at the applicable premium rate as a result of DEFENDANTS' practice of not
16 compensating them at the required premium rate, as well as for failing to compensate them for all
17 "hours worked," including travel.

18 33. PLAINTIFF and, on information and belief, other current or former employees are
19 owed wages for the violations above. DEFENDANTS failed to pay said wages when due, as
20 required by Labor Code § 204, and have not been paid them to date. The violation of California's
21 premium wage laws is substantial and occurred regularly, and DEFENDANTS' failure to maintain
22 accurate time records will shift the burden of proof.

23 34. PLAINTIFF is entitled to payment of wages owed under California Labor Code §§
24 510, 1197, 1194(a) and the applicable wage orders.

25 35. The overtime violations alleged in this complaint serve as predicates for PAGA
26 penalties, which are payable to the State of California and the workforce, pursuant to Labor Code §
27 2699, *et seq.* Pursuant to Labor Code §§ 558 and 1197.1, moreover, an employer or other person
28 who causes a wage violation is liable for wages payable to the affected worker as a civil penalty
under PAGA.

1 36. WHEREFORE, PLAINTIFF requests relief as described herein and below,
2 including unpaid wages, interest, attorney's fees and cost of suit.

3 THIRD CAUSE OF ACTION
4 REIMBURSEMENT OF EXPENSES
5 (Violation of California Labor Code § 2802)

6 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

7 37. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

8 38. PLAINTIFF and, on information and belief, other current or former employees
9 were required to incur expenses in order to perform their work, including but not limited to
10 mileage, gas and tolls. None of the work expenses incurred are reimbursed.

11 39. California Labor Code Section 2802 provides in pertinent part:

12 a) An employer shall indemnify his or her employee for all necessary
13 expenditures or losses incurred by the employee in direct consequence of
14 the discharge of his or her duties, or of his or her obedience to the
15 directions of the employer, even though unlawful, unless the employee, at
16 the time of obeying the directions, believed them to be unlawful.

17 * * *

18 c) For purposes of this section, the term "necessary expenditures or losses"
19 shall include all reasonable costs, including, but not limited to, attorney's
20 fees incurred by the employee enforcing the rights granted by this section.

21 40. PLAINTIFF is entitled to indemnification for all work expenses incurred. In
22 addition, the violation of Labor Code § 2802 as to the workforce serves as a predicate for PAGA
23 penalties. DEFENDANTS are thus liable to PLAINTIFF and, pursuant to PAGA, to the State of
24 California and workforce.

25 41. WHEREFORE, Plaintiff is entitled to recover the full amount of his expenses,
26 reasonable attorney's fees and cost of suit.

27 FOURTH CAUSE OF ACTION
28 REST BREAK VIOLATIONS
 (Violation of California Labor Code §§ 226.7, 512)

 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

1 42. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

2 43. PLAINTIFF alleges that DEFENDANTS failed to authorize and permit workers to
3 take statutory rest breaks.

4 44. California Labor Code §226.7 states:

5 (a) No employer shall require any employee to work during any meal or rest
6 period mandated by an applicable order of the Industrial Welfare
Commission.

7 (b) If an employer fails to provide an employee a meal period or rest period
8 in accordance with an applicable order of the Industrial Welfare
9 Commission, the employer shall pay the employee one additional hour of
10 pay at the employee's regular rate of compensation for each workday that
the meal or rest period is not provided.

11 45. DEFENDANTS also failed to pay additional wages in lieu of providing rest
12 periods.

13 46. Rest periods were not voluntarily waived. Any express or implied waivers obtained
14 from PLAINTIFF were not willfully obtained, were not voluntarily agreed to, were a condition of
15 employment, or were part of an unlawful contract of adhesion.

16 47. PLAINTIFF is entitled to premium rest period wages pursuant to Labor Code §
17 226.7. DEFENDANTS are liable for PAGA penalties arising from the rest period violations
18 described herein.

19 48. WHEREFORE, Plaintiff is entitled to recover the full amount of his unpaid rest
20 period wages and all related penalties and remedies.

21 FIFTH CAUSE OF ACTION
22 PRMEAL PERIOD VIOLATIONS
(Violation of California Labor Code §§ 226.7, 512 and Wage Orders)

23 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

24 49. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

25 50. PLAINTIFF alleges that DEFENDANTS failed to provide requisite meal periods.

26 51. The meal period provision of the IWC Wage Orders states:
27
28

1 (A) No employer shall employ any person for a work period of more than
2 five (5) hours without a meal period of not less than 30 minutes,
3 except that when a work period of not more than six (6) hours will
4 complete the day's work the meal period may be waived by mutual
5 consent of the employer and employee. Unless the employee is
6 relieved of all duty during a 30 minute meal period, the meal period
7 shall be considered an "on duty" meal period and counted as time
8 worked. An "on duty" meal period shall be permitted only when the
9 nature of the work prevents an employee from being relieved of all
10 duty and when by written agreement between the parties an on-the-job
11 paid meal period is agreed to. The written agreement shall state that
12 the employee may, in writing, revoke the agreement at any time.

13 (B) An employer may not employ an employee for a work period of more
14 than ten (10) hours per day without providing the employee with a
15 second meal period of not less than 30 minutes, except that if the total
16 hours worked is no more than 12 hours, the second meal period may
17 be waived by mutual consent of employer and employee only if the
18 first meal period was not waived. (See Labor Code Section 512.)

19 * * *

20 (F) If an employer fails to provide an employee a meal period in
21 accordance with the applicable provisions of this Order, the employer
22 shall pay the employee one (1) hour of pay at the employee's regular rate
23 of compensation for each work day that the meal period is not provided.

24 52. Labor Code §§ 512 and 226.7 contain similar language.

25 53. PLAINTIFF and, on information and belief, other current or former employees are
26 denied meal breaks.

27 54. Meal periods were not voluntarily waived. Any express or implied waivers obtained
28 from PLAINTIFF were not willfully obtained, were not voluntarily agreed to, were a condition of
employment, or were part of an unlawful contract of adhesion.

55. DEFENDANTS failed to pay additional wages for meal periods that were not
provided. PLAINTIFF is entitled to premium meal period wages pursuant to Labor Code § 226.7,
and DEFENDANTS are liable for PAGA penalties arising from the meal period violations
described herein.

56. WHEREFORE, Plaintiff is entitled to recover the full amount of his unpaid rest
period wages and all related penalties and remedies.

1 SIXTH CAUSE OF ACTION

2 FAILURE TO PAY WAITING TIME WAGES UPON TERMINATION OF THE
3 EMPLOYMENT RELATIONSHIP
4 (Violation of California Labor Code §§ 201 & 203)

5 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

6 57. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

7 58. Employees are entitled to payment of all wages owed immediately upon termination
8 or within 72 hours of resignation.

9 59. DEFENDANTS willfully failed to timely pay PLAINTIFF and other former
10 employees all wages due upon the termination of the employment relationship. As a result,
11 DEFENDANTS violated or caused to be violated California Labor Code §§ 201 and 202.

12 60. PLAINTIFF and other former employees are entitled to waiting time penalties
13 pursuant to California Labor Code § 203, which states:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
16 employee who is discharged or who quits, the wages of the employee shall
17 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefore is commenced; but the wages shall not continue for
more than 30 days... Suit may be filed for these penalties at any time before
the expiration of the statute of limitations on any action for the wages from
which the penalties arose.

18 61. As a result of the violations described in this complaint, DEFENDANTS have
19 failed to pay all wages owed to PLAINTIFF and other former employees upon termination of the
20 employment relationship.

21 62. More than 30 days have passed since PLAINTIFF and other former employees left
22 DEFENDANTS' employ without payment of all minimum, overtime, double-time, rest period,
23 meal period, in violation of Labor Code §§ 201, 202 and 203. As a consequence of
24 DEFENDANTS' willful conduct in not paying all earned wages, PLAINTIFF is entitled to 30
25 days' wages as a waiting time penalty under California Labor Code § 203, and pursuant to PAGA
26 cause of action below, DEFENDANTS are liable for waiting time penalties under Labor Code §§
27 201, 202, 203 and/or 256 for violations against former employees.
28

1 63. WHEREFORE, PLAINTIFF requests relief as described herein and below.

2
3 SEVENTH CAUSE OF ACTION

4 KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED WAGE
5 STATEMENT PROVISIONS
6 (Violation of California Labor Code § 226)
7 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

8 64. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

9 65. California Labor Code § 226(a) requires that employees be provided accurate
10 itemized wage statements containing gross and net wages earned, total hours worked and
11 applicable wage rates, among other statutory requirements.

12 66. PLAINTIFF and, on information and belief, other current or former employees
13 were not provided “accurate itemized statements” within the meaning of California Labor Code §
14 226, because of the violations described in this complaint. For example, the wage statements
15 provided by DEFENDANTS:

- 16 a. falsely understated the wages earned, due to the failure to pay at least
17 twice the minimum wage, and the failure to pay for all hours worked and
18 for rest and meal period premiums;
19 b. falsely understated the total hours worked due to DEFENDANTS’
20 failure to maintain accurate time records; and
21 d. falsely stated the applicable hourly rates, due to the failure to compensate
22 for and track all hours worked.

23 67. California Labor Code § 226(e) and (g) provide that employees may recover fifty
24 dollars (\$50) for an initial violation and one hundred dollars (\$100) thereafter up to four thousand
25 dollars (\$4,000), costs and reasonable attorney’s fees for violating the obligation to provide a
26 proper, itemized wage statement. Additionally, an employee may seek injunctive relief to ensure
27 compliance with this requirement under the UCL.

28 68. DEFENDANTS failed to comply with Labor Code § 226 as a result of the wage
violations and timekeeping violations described above. These violations apply to PLAINTIFF and,
on information and belief, other current or former employees. By failing to comply with the Labor
Code § 226, DEFENDANTS have injured PLAINTIFF within the meaning of the statute, entitling

1 PLAINTIFF to relief. In addition, DEFENDANTS are liable for PAGA penalties on a workforce-
2 wide basis for providing inaccurate wage statements to current or former employees.

3 69. WHEREFORE, PLAINTIFF seeks relief as described herein and below, including
4 penalties in an amount to be determined at trial, injunctive relief, cost of suit and attorney's fees.

5
6 EIGHTH CAUSE OF ACTION

7 UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF
8 UNFAIR COMPETITION LAW
9 (California Bus. & Prof. Code §§ 17200 *et seq.*)
10 PLAINTIFF MALLEM AGAINST ALL DEFENDANTS

11 70. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

12 71. On information and belief, and at all relevant times, PLAINTIFF alleges that
13 DEFENDANTS, by and through policies and practices, engaged in unlawful activity prohibited by
14 Business and Professions Code §§ 17200, *et seq.*, including the following:

- 15 a. failing to compensate PLAINTIFF for all hours worked by, for example, improperly
16 recording or failing to record hours worked, paying according to schedule instead of
17 actual hours worked, refusing to pay for certain work, and not properly compensating
18 at the applicable overtime rate, in violation of the state's minimum and overtime wage
19 laws;
20 b. failing to provide rest periods and meal periods or compensation in lieu thereof, in
21 violation of state law;
22 c. failing to pay all wages due at the appropriate periodic intervals as required by Labor
23 Code § 204;
24 d. failing to pay all wages owed timely upon termination of the employment
25 relationship, in violation of state law;
26 e. failing to provide accurate itemized wage statements stating all hours worked, all
27 applicable pay rates, or all gross and net wages earned, in violation of state law; and
28

1 f. failing to maintain records showing when Class Members began and ended each work
2 period and meal period, or showing total daily hours worked or all wages earned, in
3 violation of state law; and

4 4. DEFENDANTS' actions as alleged herein constitute false, fraudulent, unlawful,
5 unfair, and deceptive business practices, within the meaning of Business and Professions Code §§
6 17200 et seq. PLAINTIFF has suffered injury in fact and has lost money or property as a result of
7 such unfair competition.

8 5. PLAINTIFF is entitled to an injunction and other equitable relief against
9 DEFENDANTS for such unlawful practices to prevent future damage for which there is no
10 adequate remedy at law, and to avoid a multiplicity of lawsuits.

11 6. As a result of DEFENDANTS' unlawful acts described herein, DEFENDANTS
12 have reaped and continue to reap unfair benefits and unlawful profits at the expense of
13 PLAINTIFF. DEFENDANTS should be enjoined from this activity and made to disgorge the ill-
14 gotten gains and restore to PLAINTIFF the wrongfully withheld wages, pursuant to Business and
15 Professions Code § 17203, as well as to enforce penalty provisions pursuant to § 17202.

16 7. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
17 have been and continue to be unjustly enriched through false, fraudulent, unlawful, unfair, and
18 deceptive business practices as alleged throughout this Complaint. PLAINTIFF is and has been
19 prejudiced by DEFENDANTS' unfair trade practices.

20 8. As a direct and proximate result of DEFENDANTS' unfair business practices,
21 PLAINTIFF is entitled to equitable and injunctive relief from DEFENDANTS, including full
22 restitution and/or disgorgement of all wages which have been unlawfully withheld from them, and
23 enjoinder of DEFENDANTS to cease and desist from engaging in the practices described herein.

24 9. As a direct and proximate result of DEFENDANTS' unfair business practices,
25 PLAINTIFF is entitled, in accordance with Business and Professions Code § 17202, to
26 enforcement of penalties resulting from the business acts and practices described herein, and
27 entitled to enjoinder of DEFENDANTS to cease and desist from engaging in the practices
28 described herein.

1 10. On information and belief, the unlawful conduct alleged herein is continuing, and
2 there is no indication that DEFENDANTS will cease such activity. PLAINTIFF alleges that if
3 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, DEFENDANTS
4 will continue the practice of failing to properly compensate employees for all wages owed; provide
5 accurate wage statements; maintain required records; or pay all wages owed upon discharge.

6 11. WHEREFORE, PLAINTIFF requests relief as described herein and below and as
7 deemed just and proper by this Court.

8 NINTH CAUSE OF ACTION

9 PENALTIES PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS
10 GENERAL ACT (Cal. Labor Code § 2699, *et seq.*)

11 ALL PLAINTIFFS AGAINST ALL DEFENDANST

12 12. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

13 13. PLAINTIFFS are aggrieved employee within the meaning of Labor Code §2699(a).
14 PLAINTIFF brings this claim on behalf of himself, the State of California and other current or
15 former aggrieved employees affected by the labor law violations alleged in this complaint.

16 14. PLAINTIFFS have complied with the administrative requirements listed in Labor
17 Code § 2699.3 that are prerequisites to bringing this action. PLAINTIFFS gave notice to
18 DEFENDANTS and the Labor & Workforce Development Agency ("LWDA") of the violations
19 alleged herein and the theories and facts supporting those allegations. The LWDA has charged
20 PLAINTIFFS with the duty of enforcing the Labor Code on the State's behalf and the interest of
21 the general public. PLAINTIFFS also act in representative fashion on behalf of the workforce, and
22 may proceed in such fashion without having to meet class certification requirements.

23 15. Acting under this statutory authority, PLAINTIFFS seek civil penalties for all
24 violations described in this complaint pursuant to Labor Code § 2699(a) (covering Labor Code
25 provisions that contain specific penalties) and § 2699(f) (prescribing default penalties for Labor
26 Code provisions that do not specify a penalty). PLAINTIFFS are also entitled to an award of
27 attorneys' fees and costs as set forth below.

28 16. The violations described in this complaint serve as predicates for PAGA liability

1 and include all provision of Labor Code § 2699.5. DEFENDANTS violated the rights of workers,
2 including PLAINTIFFS, as a result of the practices described in this complaint, including: (a)
3 failure to compensate workers at the required premium rate set forth in Labor Code section 510
4 and the Wage Orders; (b) failing to compensate workers for all hours worked and violating the
5 minimum wage in violation of Labor Code 1194 and the Wage Orders; (c) failing to keep accurate
6 records of the start and end of work periods, meal periods and rest periods; (d) failing to provide
7 required rest and meal periods or statutory compensation in lieu thereof; (e) failing to provide
8 accurate wage statements; and (f) failing to reimburse for expenses (h) failing to comply with wage
9 statement requirements of section 226 and wage orders; (i) failing to comply with California's
10 timekeeping requirements (violation of sections 226 and wage orders); and (j) failing to pay all
11 wages owed upon termination of the employment relationship (violation of sections 201-203, 256).

12 17. The PAGA claims are also brought against DEFENDANTS pursuant to Labor
13 Code provisions that impose liability on persons who *cause* violations of the Labor Code or Wage
14 Orders, including sections 558 and 1197.1.

15 18. California Labor Code § 558 states:

16 (a) Any employer or other person acting on behalf of an employer who
17 violates, or causes to be violated, a section of this chapter or any provision
18 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to any amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for
22 each underpaid employee for each pay period for which the employee
was underpaid in addition to an amount sufficient to recover underpaid
wages....

23 19. Similarly, Labor Code §1197.1(a) states:

24 Any employer or other person acting either individually or as an officer,
25 agent, or employee of another person, who pays or causes to be paid to
26 any employee a wage less than the minimum fixed by an order of the
commission shall be subject to a civil penalty and, restitution of wages,
and liquidated damages payable to the employee....

27 20. The viability of holding persons liable by this method was discussed by the
28

1 California Supreme Court in *Reynolds v. Bement*, where the court noted that liability against non-
2 employers could be obtained through the use of PAGA and § 558:

3 Imposition of individual civil liability under the IWC employer definition is
4 not the only means by which an employee can seek recovery against a
5 corporate agent. "The Berman hearing procedure is designed to provide a
6 speedy, informal, and affordable method of resolving wage claims" (*Cuadra*
7 *v. Millan, supra*, 17 Cal.4th at p. 858, 72 Cal.Rptr.2d 687, 952 P.2d 704),
8 and, as defendants concede, nothing in that process precludes hearing
9 officers from finding individual corporate agents liable for unpaid wages
10 when such liability is proven on established common law or statutory
11 theories. **Moreover, pursuant to section 558, subdivision (a), any "person
12 acting on behalf of an employer who violates, or causes to be violated" a
13 statute or wage order relating to working hours is subject to a civil
14 penalty, payable to the affected employee, equal to the amount of any
15 underpaid wages. As noted earlier, the Legislature has provided that
16 aggrieved employees may under certain circumstances maintain civil
17 actions to recover such penalties. (§ 2699, subd. (a).) (Emphasis added.)**

18 As such, DEFENDANTS are liable for causing the violations at issue.

19 21. WHEREFORE, PLAINTIFFS request relief as described in this complaint and
20 below.

21 VII. PRAYER

22 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS and each of them
23 as follows:

- 24 1. For statutory minimum or agreed upon wages and interest thereon, as well as attorney's
25 fees and cost of suit, Cal. Labor Code §§ 200, *et seq.*, 1194, 1194.2, 1197.1 and wage
26 orders.
- 27 2. For liquidated damages arising from violations of minimum wage, Cal. Labor Code §
28 1194.2
3. For premium (overtime) wages and interest thereon, as well as attorney's fees and cost of
suit, Cal. Labor Code §§ 200, *et seq.*, 510, 1194, 1194.2, 1197.1 and wage orders.
4. For premium rest and meal period wages, Cal. Labor Code § 226.7, 512 and wage orders.
5. For an award of a preliminary and permanent injunction ordering DEFENDANTS to cease
the unlawful and unfair business practices as herein alleged.
6. For restitution to PLAINTIFF in amounts to be proven at trial.

- 1 7. For reimbursement of expenses, attorney's fees and costs pursuant to Labor Code § 2802
2 and wage orders.
- 3 8. For attorneys' fees, costs and interest on wages, pursuant to CCP § 1021.5.
- 4 9. For waiting time penalties pursuant to Labor Code § 203.
- 5 10. For an award of (a) actual damages for failure to maintain time records reflecting all hours
6 worked in an amount to be proven at trial, (b) statutory amounts, or in the alternative (c) \$50.00 for
7 the first violation and \$100.00 for each subsequent violation up to a maximum of \$4,000.00, per
8 employee.
- 9 11. For an award of injunctive relief ordering DEFENDANTS to comply with Labor Code §
10 226, plus attorney's fees and costs.
- 11 12. For penalties and attorneys' fees and costs, pursuant to Labor Code §§ 226(e), 226(f),
12 226(h) and CCP §1021.5.
- 13 13. For an award of pre-judgment interest as authorized under the law.
- 14 14. For an award of post-judgment interest as authorized under the law.
- 15 15. For enforcement and an award of civil penalties pursuant to Labor Code § 2699, *et seq.* in
16 amounts to be proven at trial, as well as attorney's fees and costs, 2699(g)(1) & California
17 Code of Civil Procedure § 1021.5.
- 18 16. For penalties and all available relief pursuant to PAGA and all predicate provisions of the
19 Labor Code.
- 20 17. For wages as penalties, pursuant to Labor Code §§558, 1197.1 and 2699 *et seq.*
- 21 18. For such other relief as this Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 PLAINTIFF hereby demands trial of his claims by jury to the extent authorized by law.

24 Dated: April 28, 2016

MALLISON & MARTINEZ

25 By: 

26 Stan S. Mallison
27 Hector R. Martinez
28 Marco A. Palau
Joseph D. Sutton
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