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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

NICOLE LOPES, individually, and on
behalf of other members of the general
public similarly situated, and aggrieved
employees,

Plaintiff,

vs.

KOHL'S DEPARTMENT STORES, INC.,
a Delaware Corporation; and DOES 1
through 10, inclusive,

Defendants.

ISAAC BOBADILLA and BRIAN
PARADIS, individually, and on behalf of
other members of the general public
similarly situated,

Plaintiff,

vs.

KOHL'S DEPARTMENT STORES, INC.,
a California Corporation; and DOES 1
through 10, inclusive,

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

MAR 22 2012

CLERK OF THE SUPERIOR COURT
By Tasha Perry, Deputy

Lead Case No.: RG08380189
Consolidated with: RG11597341 (San Diego
Superior Case No. 37-2011-00084796-CU-
OE-CTL)

[Assigned to: Hon. Robert B. Freedman, Dept.
20]

FIRST AMENDED TO
**CONSOLIDATED CLASS ACTION
COMPLAINT & ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698 ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (3) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (4) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (5) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code § 227.3 (Vested Accrued Vacation Time);

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- (8) Violation of California Labor Code § 1198 and California Code of Regulations, Title 8, section 11070(5) (Unpaid Reporting Time Pay);
- (9) Violation of California Labor Code § 1198 and California Code of Regulations, Title 8, section 11070(14) (Failure to Provide Seating);
- (10) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.*

Jury Trial Demanded

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Brian Paradis

1 Plaintiffs NICOLE LOPES, ISAAC BOBADILLA, and BRIAN PARADIS,
2 individually, and on behalf of all other members of the public similarly situated, and as
3 aggrieved employees pursuant to the Private Attorneys General Act, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal
7 jurisdiction limits of the Superior Court and will be established according to proof at trial.
8 The amount in controversy for each class representative, including claims for compensatory
9 damages and pro rata share of attorneys' fees, is less than seventy-five thousand dollars
10 (\$75,000). However, Plaintiffs allege on information and belief, that the aggregate amount in
11 controversy for the proposed class action, including monetary damages, restitution and
12 attorneys fees requested by Plaintiffs, is less than five million dollars (\$5,000,000), exclusive
13 of interests and costs.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10, which grants the Superior Court "original jurisdiction in
16 all causes except those given by statute to other courts." The statutes under which this action
17 is brought do not specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, upon information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice.

23 4. Venue is proper in this Court because, upon information and belief, one or
24 more of the named Defendants reside, transact business, or have offices in this county and the
25 acts and omissions alleged herein took place in this county.

26 5. California Labor Code sections 2699 *et seq.*, the "Labor Code Private Attorneys
27 General Act" ("PAGA"), authorizes aggrieved employees to sue directly for various civil
28 penalties under the California Labor Code.

6. Plaintiff NICOLE LOPES has exhausted her administrative remedies by timely requesting and obtaining verification from the California Labor and Workforce Development Agency (“LWDA”). On March 28, 2008, the LWDA stated that it does not intend to investigate any alleged violations.

7. On February 3, 2011 Plaintiff ISAAC BOBADILLA timely provided notice to the California LWDA and to Defendants, pursuant to California Labor Code section 2699.3(a). Plaintiff ISAAC BOBADILLA did not receive a response to his notice from the LWDA within thirty-three (33) days per California Labor Code section 2699.3(a).

8. On March 10, 2011, Plaintiff BRIAN PARADIS timely provided notice to the California LWDA and to Defendants, pursuant to California Labor Code section 2699.3(a). Plaintiff BRIAN PARADIS did not received a response to his notice from the LWDA within thirty-three (33) days per California Labor Code section 2699.3(a).

THE PARTIES

9. Plaintiff NICOLE LOPES is a resident of Alameda County in the State of California.

10. Plaintiff ISAAC BOBADILLA is a resident Imperial Beach, California.

11. Plaintiff BRIAN PARADIS is a resident of Camarillo, California.

12. Defendant KOHL’S DEPARTMENT STORES, INC. was and is, upon information and belief, a Delaware Corporation doing business in California, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

13. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but pray for leave to amend and serve such fictitiously named Defendants once their names and capacities become known as per California Code of Civil Procedure section 474.

14. Plaintiffs are informed and believe, and thereon allege, that DOES 1-10 are the partners, agents, owners, shareholders, managers or employees of KOHL’S DEPARTMENT STORES, INC. and were acting on behalf of KOHL’S DEPARTMENT STORES, INC.

15. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, KOHL'S DEPARTMENT STORES, INC. and DOES 1-10 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent the official policy of, Defendants.

16. At all relevant times, Defendants, and each of them, ratified each and every act or omission complained of herein. At all relevant times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiffs are informed and believe, and thereon allege, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure section 382.

19. On April 4, 2008, Plaintiff NICOLE LOPES, a former "Ad Set Supervisor" that worked for Defendants, filed a class action lawsuit on behalf of herself and other putative class members against Defendants KOHL'S DEPARTMENT STORES, INC. in the Superior Court of California, County of Alameda, styled *Lopes v. Kohl's Department Stores, Inc. et al.*, Case No. RG08380189 (the "*Lopes Action*"). The *Lopes Action* is currently pending at the time of the filing of this consolidated complaint. The *Lopes Action* alleges the following claims: (1) violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination); (3) violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (4) violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (5) violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (6) violation of California Labor Code § 226(a) (Non-Compliant Wage

Statements); (7) violation of California Labor Code § 227.3 (Vested Accrued Vacation Time); and (8) violation of California Business & Professions Code §§ 17200, *et seq.* The relevant statute of limitations related to the claims in the *Lopes* Action commences April 4, 2004, four (4) years prior to the filing of the *Lopes* complaint until the date of certification.

20. On January 31, 2011, Plaintiff ISAAC BOBADILLA, a former “cashier” that worked for Defendants, filed a class action lawsuit on behalf of himself and other putative class members against Defendants KOHL’S DEPARTMENT STORES, INC. in the Superior Court of California, County of San Diego styled *Bobadilla v. Kohl’s Department Stores, Inc. et al.*, Case No. 37-2011-00084796-CU-OE-CTL (the “*Bobadilla* Action”). The initial filing in the *Bobadilla* Action alleged many of the same claims as the *Lopes* Action with the addition, including, (1) violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (2) violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) violation of California Labor Code §§ 1198 and California Code of Regulations, Title 8, section 11070(5) (Unpaid Reporting Time Pay); (4) violation of California Labor Code § 227.3 (Vested Accrued Vacation Time); (5) violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (6) violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination); (7) violation of California Labor Code § 1198 and California Code of Regulations, Title 8, section 11070(14) (Failure to Provide Seating); (8) violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); and (9) violation of California Business & Professions Code §§ 17200, *et seq.*

21. On March 3, 2011, Plaintiff ISAAC BOBADILLA filed a First Amended Complaint in the *Bobadilla* Action whereby Plaintiff BRIAN PARADIS was added as a named, additional representative plaintiff.

22. The First Amended Complaint in the *Bobadilla* Action also added causes of action for violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages), and violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime).

23. On August 21, 2011, this Court granted the Stipulation to Transfer and

1 Consolidate the *Lopes* and *Bobadilla* Actions.

2 24. The filing of the *Lopes* Action tolls the applicable statutes of limitations for all
3 putative class members in this putative class action.

4 25. During the period commencing April 4, 2004 to present (the “Class Period”),
5 Defendants had a policy and practice of (1) permitting, encouraging, and/or requiring its non-
6 exempt or hourly employees, including Plaintiffs and class members, to work in excess of five
7 (5) hours per day without providing an adequate off-duty meal period of at least thirty (30)
8 minutes; (2) permitting, encouraging, and/or requiring its non-exempt or hourly employees,
9 including Plaintiffs and Class Members, to work in excess of three and one-half (3 ½) hours
10 per day without authorizing and permitting a rest period of at least thirty (10) minutes; (3)
11 failing to pay one additional hour of pay at the Class Members’ respective regular rate of
12 compensation for each work day that Plaintiffs and Class Members were not provided an
13 adequate off-duty meal or rest period; (4) failing to pay overtime; (5) failing to furnish
14 accurate wage statements to Plaintiffs and Class Members; (6) failing to pay all wages upon
15 termination; (7) failing to timely pay all wages during employment; (8) failure to pay at least
16 minimum wages to Plaintiffs and Class Members; (9) failing to pay all vested accrued
17 vacation time; (10) failure to provide suitable seating to Plaintiffs and Class Members; and
18 failure to pay reporting time pay to Plaintiffs and Class Members who reported to work but
19 were not put to work or were furnished with less than half of their usual or scheduled day of
20 work.

21 26. All claims alleged herein arise under California law for which Plaintiffs seek
22 relief authorized by California law.

23 27. Plaintiffs’ proposed class consists of and is defined as follows:
24 All hourly or non-exempt employees who have been employed by
25 Defendants in the State of California within four years prior to the
26 filing of the *Lopes* Action until the date of certification (“Class”).

27 28. Plaintiffs’ first proposed subclass consists of and is defined as follows:
28 All hourly or non-exempt employees who have been employed by
Defendants in the State of California within four years prior to the
filing of the *Bobadilla* Action until the date of certification and
who earned vested vacation wages during their employment
(“Vacation Subclass”).

- 1 29. Plaintiffs’ second proposed subclass consists of and is defined as follows:
2 All former non-exempt or hourly paid employees of Defendants
3 who worked in California within one year prior to the filing of the
 Lopes Action until the date of certification (“Penalties Subclass”).
- 4 30. Plaintiffs’ third proposed subclass consists of and is defined as follows:
5 All former non-exempt or hourly paid employees of Defendants
6 who worked in California within one year prior to the filing of the
 Bobadilla Action until the date of certification (“Seating
7 Subclass”).
- 8 31. There is a well-defined community of interest in the litigation and the class is
9 readily ascertainable:
- 10 (a) Numerosity: The members of the class (and each subclass, if any) are
11 so numerous that joinder of all members would be unfeasible and
12 impractical. The membership of the entire class is unknown to
13 Plaintiffs at this time, however, the class is estimated to be greater than
14 one hundred (100) individuals and the identity of such membership is
15 readily ascertainable by inspection of Defendants’ employment records.
- 16 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
17 protect the interests of each class member with whom they have a well
18 defined community of interest, and Plaintiffs’ claims (or defenses, if
19 any) are typical of all class members’ as demonstrated herein.
- 20 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
21 protect the interests of each class member with whom they have a well-
22 defined community of interest and typicality of claims, as demonstrated
23 herein. Plaintiffs acknowledge that they have an obligation to make
24 known to the Court any relationship, conflicts or differences with any
25 class member. Plaintiffs’ attorneys, the proposed class counsel, are
26 versed in the rules governing class action discovery, certification, and
27 settlement. Plaintiffs have incurred, and throughout the duration of this
28 action, will continue to incur costs and attorneys’ fees that have been,
 are, and will be necessarily expended for the prosecution of this action

1 for the substantial benefit of each class member.

- 2 (d) Superiority: The nature of this action makes the use of class action
3 adjudication superior to other methods. A class action will achieve
4 economies of time, effort and expense as compared to separate lawsuits,
5 and will avoid inconsistent outcomes because the same issues can be
6 adjudicated in the same manner and at the same time for the entire class.
- 7 (e) Public Policy Considerations: Employers in the State of California
8 violate employment and labor laws every day. Current employees are
9 often afraid to assert their rights out of fear of direct or indirect
10 retaliation. Former employees are fearful of bringing actions because
11 they believe their former employers might damage their careers through
12 negative references and/or other means. Class actions provide the class
13 members who are not named in the complaint with a type of anonymity
14 that allows for the vindication of their rights at the same time as their
15 privacy is protected.

16 32. There are common questions of law and fact as to the class (and each subclass,
17 if any) that predominate over questions affecting only individual members, including but not
18 limited to:

- 19 (a) Whether Defendants' failure to pay wages, without abatement or
20 reduction, in accordance with the California Labor Code, was willful;
- 21 (b) Whether Defendants required Plaintiffs and the other class members to
22 work over eight (8) hours per day, over twelve (12) hours per day, or
23 over forty (40) hours per week and failed to pay legally required
24 overtime compensation to Plaintiffs and the other class members as
25 required by the California Labor Code, including but not limited to
26 sections 510 and 1198;
- 27 (c) Whether Defendants failed to timely pay all wages due to Plaintiffs and
28 the other class members upon their discharge or resignation as required

by the California Labor Code, including but not limited to sections 201 and 202;

(d) Whether Defendants deprived Plaintiffs and the other class members of meal periods or required Plaintiffs and the class members to work during meal periods without proper compensation as required by the California Labor Code, including but not limited to sections 226.7 and 512(a);

(e) Whether Defendants deprived Plaintiffs and the other class members of rest periods or required Plaintiffs and the class members to work during rest periods without proper compensation as required by the California Labor Code, including but not limited to section 226.7;

(f) Whether Defendants required Plaintiffs and class members to report work for a second time for a second work shift of less than two hours without properly compensating them;

(g) Whether Defendants complied with wage reporting as required by the California Labor Code, including but not limited to section 226;

(h) Whether Defendants paid all vested vacation wages as required by the California Labor Code, including but not limited to section 227.3;

(i) Whether Defendants failed to provide seating to employees as required by California Code of Regulations, Title 8, section 11070, subsection 14;

(j) Whether Defendants failed to timely pay all wages due to Plaintiffs and other class members during employment as required by the California Labor Code, including but not limited to section 204;

(k) Whether Defendants failed to pay reporting time pay to Plaintiffs and class members who reported to work but were not put to work or were furnished with less than half of their usual or scheduled day of work as required by California Code of Regulations, Title 8, section 11070,

subsection 5;

- (l) Whether Defendants failed to pay at least minimum wages to Plaintiffs and class members as required by the California Labor Code, including but not limited to sections 1194, 1197, and 1197.1;
- (j) Whether Defendants' conduct was willful or reckless;
- (k) Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

33. At all relevant times set forth, Defendants employed Plaintiffs and other persons as non-exempt or hourly employees.

34. Defendants employed Plaintiff NICOLE LOPES as an "Ad Set Supervisor," which is a non-exempt or hourly position, from about May 2006 to on or about April 21, 2007 at the Pleasanton and San Leandro, California business locations.

35. Defendants employed Plaintiff ISAAC BOBADILLA as a "cashier," which is a non-exempt hourly-paid position, from about September 2008 until about September 2010, at Defendants' Chula Vista store location in San Diego County, California.

36. Defendants employed Plaintiff BRIAN PARADIS from on or about December 31, 2002 until on or about April 8, 2010 at Defendants' Simi Valley, West Hills, Newbury Park, and Moorpark, California locations. During that period, between on or about November 16, 2008 until on or about April 8, 2010, Defendants employed Plaintiff BRIAN PARADIS as a non-exempt hourly-paid supervisor.

37. Defendants continue to employ non-exempt or hourly employees within California.

38. Plaintiffs are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel

practices, and about the requirements of California law.

39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other members of the class were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiffs' and class members' regular rate of pay when they did not receive a timely uninterrupted meal period. In violation of the California Labor Code, Plaintiffs were not provided timely and uninterrupted meal periods.

41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive all rest periods or payment of one additional hour of pay at Plaintiffs' and class members' regular rate of pay when a rest period was missed. In violation of the California Labor Code, Plaintiffs were not provided rest periods.

42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least two hours of pay, or at least half-of their regularly scheduled hours worth of pay for those whose shifts are regularly over four, when Plaintiffs or class members reported to work their regular shift but were put to work less than half of their regular shift.

43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and aggrieved employees were entitled to have all unused vested vacation wages paid out upon termination.

44. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to timely payment of wages during employment. In violation of the California Labor Code, Plaintiffs did not receive payment of all wages, including, but not limited to, reporting time pay, and meal and rest period premiums within permissible time periods.

1 45. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and class members were entitled to receive all the wages
3 owed to them upon discharge. In violation of the California Labor Code, Plaintiffs did not
4 receive all wages owed to them, including vested vacation wages, upon their discharge from
5 Defendants' employ. In violation of the California Labor Code, Plaintiffs did not receive
6 payment of all wages timely upon termination, including, but not limited to, reporting time
7 pay, and meal and rest period premiums within permissible time periods.

8 46. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and aggrieved employees were entitled to suitable seating
10 and/or were entitled to sit when it did not interfere with the performance of their duties.

11 47. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and class members were entitled to receive complete and
13 accurate wage statements in accordance with California law including written wage statements
14 with each of the nine enumerated requirements set forth in Labor Code section 226(a). In
15 violation of the California Labor Code, Plaintiffs were not provided complete and accurate
16 wage statements.

17 48. Plaintiffs are informed and believe, and thereon allege, that Defendants knew
18 or should have known that Plaintiffs and class members were entitled to received at lease
19 minimum wages for compensation and that they were not receiving at least minimum wages
20 for, among other things, time spent undergoing security/bag checks before clocking-in at the
21 beginning of their shifts and after clocking-out at the end of their shifts.

22 49. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants knew or should have known that they had a duty to compensate
24 Plaintiffs and class members, and that Defendants had the financial ability to pay such
25 compensation, but wilfully, knowingly and intentionally failed to do so, and falsely
26 represented to Plaintiffs and other class members that they were properly denied wages, all in
27 order to increase Defendants' profits.

28 50. California Labor Code section 218 states that nothing in Article 1 of the Labor

Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

51. At all times herein set forth, PAGA was applicable to Plaintiffs’ employment by Defendants.

52. At all times herein set forth, PAGA provides that for any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violation of the California Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

53. Pursuant to California Labor Code section 2699, a civil action under PAGA may be brought by an “aggrieved employee,” who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

54. Plaintiffs were employed by the Defendants and the alleged violations were committed against them during her time of employment; therefore, Plaintiffs are “aggrieved employees.”

55. Plaintiffs and other employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

56. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiffs, may pursue a civil action arising under California Labor Code sections 2699 *et seq.*, after the following requirements have been met:

(a) The aggrieved employee or representative shall give written notice by certified mail to the LWDA and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(b) The LWDA shall provide notice to the employer and the aggrieved employee or representative by certified mail that it does not intend to

investigate the alleged violation within 30 calendar days of the postmark date of the notice received. Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice, the aggrieved employee may commence a civil action pursuant to Section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled..

57. Plaintiffs provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

58. On March 28, 2008, the LWDA responded to Plaintiff NICOLE LOPES' letter saying that it did not intend to investigate her claims. Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS did not receive responses to their notices from the LWDA within thirty-three (33) days per California Labor Code section 2699.3(a). Plaintiffs have, therefore, satisfied the requirements of California Labor Code section 2699.3 and may recover civil penalties, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7(a), 227.3, 510, 512, 558, 1194, 1197, 1197.1, and 1198.

FIRST CAUSE OF ACTION

Violation of California Labor Code sections 510 and 1198

(Against all Defendants)

59. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 58.

60. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and the other class members employed by Defendants, and

1 working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at
2 the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more
3 than forty (40) hours in a workweek.

4 62. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiffs and the other class members employed by Defendants, and working
6 more than twelve (12) hours in a day, overtime compensation at a rate of two times their
7 regular rate of pay.

8 63. California Labor Code section 510 codifies the right to overtime compensation
9 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours
10 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day
11 of work, and to overtime compensation at twice the regular hourly rate for hours worked in
12 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day
13 of work.

14 64. During the relevant time period, Plaintiffs and the other class members
15 consistently worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a
16 day, or in excess of forty (40) hours in a week.

17 65. During the relevant time period, Defendants willfully failed to pay all overtime
18 wages owed to Plaintiffs and the other class members.

19 66. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
20 overtime compensation, as required by California laws, violates the provisions of California
21 Labor Code sections 510 and 1198, and is therefore unlawful.

22 67. Pursuant to California Labor Code section 1194, Plaintiffs and class members
23 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and
24 attorneys' fees.

25 68. Pursuant to the civil penalties provided for in California Labor Code section
26 2699(f) and (g) and 558, the State of California, Plaintiffs and other aggrieved employees are
27 entitled to recover unpaid wages and civil penalties of one-hundred dollars (\$100) for each
28 aggrieved employee per pay period for the initial violation and two-hundred dollars (\$200) for

each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code sections 510, 1194 and 1198.

SECOND CAUSE OF ACTION

Violation of California Labor Code sections 201 and 202

(Against all Defendants)

69. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 68.

70. At all times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

71. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants their earned and unpaid wages, included but not limited to reporting time pay, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

72. Defendants' failure to pay Plaintiffs and those class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

73. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced, but the wages shall not continue for more than thirty (30) days.

74. Plaintiffs and class members are entitled to recover from Defendants the

1 statutory penalty for each day they were not paid, at their regular hourly rate of pay, up to a
2 thirty (30) day maximum pursuant to California Labor Code section 203.

3 75. Pursuant to the civil penalties provided for in California Labor Code section
4 2699(a), the State of California, Plaintiffs and other aggrieved employees are entitled to
5 recover civil penalties plus costs and attorneys' fees for violation of California Labor Code
6 sections 201 and 202.

7 **THIRD CAUSE OF ACTION**

8 **Violation of California Labor Code section 204**

9 **(Against all Defendants)**

10 76. Plaintiffs incorporate by reference and re-alleges as if fully stated herein the
11 material allegations set out in paragraphs 1 through 75.

12 77. At all relevant times, California Labor Code 204 provides that all wages earned
13 by any person in any employment between the 1st and the 15th days, inclusive, of any
14 calendar month, other than those wages due upon termination of an employee, are due and
15 payable between the 16th and the 26th day of the month during which the labor was
16 performed.

17 78. At all relevant times, California Labor Code section 204 provides that all wages
18 earned by any person in any employment between the 16th and the last day, inclusive, of any
19 calendar month, other than those wages due upon termination of an employee, are due and
20 payable between the 1st and the 10th day of the following month.

21 79. At all relevant times, California Labor Code section 204 provides that all wages
22 earned for labor in excess of the normal work period shall be paid no later than the payday for
23 the next regular payroll period.

24 80. During the relevant time period, Defendants willfully failed to pay Plaintiffs
25 and class members all wages due to them, including but not limited to, reporting time pay,
26 and/or meal and rest period premiums, within any time period permissible by California Labor
27 Code section 204.

28 81. Plaintiffs and class members are entitled to recover all remedies available for

violations of California Labor Code section 204.

82. At all relevant times, California Labor Code section 210 provides that every person who fails to pay the wages of each employee in violation of California Labor Code section 204 shall be subjected to a civil penalty of one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent violation, plus twenty-five percent (25%) of the amount withheld.

83. Pursuant to the civil penalties provided for in California Labor Code section 2699(a), the State of California, Plaintiffs and other aggrieved employees are entitled to recover civil penalties plus costs and attorneys' fees for violation of California Labor Code section 204.

FOURTH CAUSE OF ACTION

Violation of California Labor Code sections 226.7(a) and 512(a)

(Against all Defendants)

84. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 83.

85. At all times herein set forth, the California IWC Order and California Labor Code sections 226.7(a) and 512(a) were applicable to Plaintiffs' and class members' employment by Defendants.

86. At all times herein set forth, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California IWC.

87. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) provide that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

88. During the relevant time period, Plaintiffs and class members who were

1 scheduled to work for a period of time no longer than six (6) hours, and who did not waive
2 their legally-mandated meal periods by mutual consent, were required to work for periods
3 longer than five (5) hours without an uninterrupted meal period of not less than thirty (30)
4 minutes.

5 89. During the relevant time period, Plaintiffs and class members who were
6 scheduled to work for a period of time in excess of six (6) hours were required to work for
7 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
8 (30) minutes.

9 90. During the relevant time period, Defendants willfully required Plaintiffs and
10 class members to work during meal periods and failed to compensate Plaintiffs and class
11 members for work performed during meal periods. For example, Plaintiffs were regularly
12 unable to take a meal period, if at all, until after having already worked more than five hours
13 due to Defendants' failure to employ sufficient employees so that they could be relieved from
14 their duties.

15 91. During the relevant time period, Plaintiffs and class members who were
16 scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours, and who
17 did not waive their legally-mandated meal periods by mutual consent were required to work in
18 excess of ten (10) hours without receiving a second uninterrupted meal period of not less than
19 thirty (30) minutes.

20 92. During the relevant time period, Defendants willfully required Plaintiffs and
21 class members to work during meal periods and failed to compensate Plaintiffs and members
22 of the class for work performed during meal periods.

23 93. During the relevant time period, Defendants failed to pay Plaintiffs and class
24 members the full meal period premium due pursuant to California Labor Code section 226.7.

25 94. Defendants' conduct violates applicable IWC Wage Orders, and California
26 Labor Code sections 226.7(a) and 512(a).

27 95. Pursuant to California Labor Code section 226.7(b), Plaintiffs and class
28 members are entitled to recover from Defendants one additional hour of pay at the employees'

regular rate of compensation for each work day that the meal period was not provided.

96. Pursuant to the civil penalties provided for in California Labor Code sections 2699(f) and (g) and 558, the State of California, Plaintiffs and the other aggrieved employees are entitled to recover unpaid wages and civil penalties of one-hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two-hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code sections 226.7(a), and 512(a).

FIFTH CAUSE OF ACTION

Violation of California Labor Code sections 226.7(a)

(Against all Defendants)

97. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 96.

98. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiffs' and class members' employment by Defendants.

99. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

100. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

101. During the relevant time period, Defendants required Plaintiffs and class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked. For example, Plaintiffs frequently were unable to take a rest break because of insufficient staffing.

102. During the relevant time period, Defendants willfully required Plaintiffs and class members to work during rest periods.

103. During the relevant time period, Defendants failed to pay Plaintiffs and class members the full rest period premium due pursuant to California Labor Code section 226.7. As with meal periods, Plaintiffs were regularly assigned too much work to complete or did not have sufficient relief because Defendants did not schedule sufficient employees so as to allow Plaintiffs to take full 10-minute and uninterrupted rest periods.

104. Defendants' conduct violates the applicable IWC Wage Orders and California Labor Code section 226.7.

105. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiffs and class members are entitled to recover from Defendants one (1) additional hour of pay at the employee's regular hourly rate of compensation for each work day that the rest period was not provided.

106. Pursuant to the civil penalties provided for in California Labor Code sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved employees are entitled to recover civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 226.7.

SIXTH CAUSE OF ACTION

Violation of California Labor Code section 226(a)

(Against all Defendants)

107. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 106.

108. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine items of information, including total hours worked by the employee, all applicable hourly rates and the total hours worked at each rate by the

employee, the inclusive dates of the period for which the employee is paid and the name and address of the legal entity that is the employer.

109. Defendants have intentionally and wilfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to list the total hours worked.

110. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiffs and class members have suffered injury and damage to their statutorily protected rights.

111. Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code section 226(a).

112. Plaintiffs and class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

113. Plaintiffs and the other class members are also entitled to an award of costs and reasonable attorneys' fees pursuant to California Labor Code section 226(e).

114. Plaintiffs and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g).

115. Pursuant to the civil penalties provided for in California Labor Code section 2699(f) and (g), the State of California, Plaintiffs and other aggrieved employees are entitled to recover civil penalties of one-hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two-hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 226(a).

SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 227.3
(Failure to Pay Vested Vacation Wages)
(Against all Defendants)

116. Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 115.

117. At all times herein set forth, California Labor Code section 227.3 provides that if an employer discharges an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay.

118. During the relevant time period, Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members had unused vested vacation wages (including, but not limited to, vacation pay, personal day pay, personal holiday pay, and/or floating holiday pay) that were not paid out to them in a timely fashion at the end of their employment, in violation of California Labor Code section 227.3. For example, Defendants' written policy provides for the accrual of vested vacation wages based upon the amount of hours worked. After having used full vacation days, Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS continued to work and thereby accrue at least partial vacation day pay but Defendants did not pay Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS their pro-rata vested vacation wages at the time of their discharge. They have not received their vested vacation wages since.

119. As a matter of uniform corporate policy and procedure and practices, Defendants violated California Labor Code section 227.3 by failing to pay Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS, and the other class members all vested vacation wages at the end of their employment. The uniform policy of not paying Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS, and the other members of the class all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

120. The conduct of Defendants and their agents and employees as described herein

1 was willful and was done in conscious disregard of Plaintiffs ISAAC BOBADILLA and
2 BRIAN PARADIS' and the other class members' rights, and supports an award of up to thirty
3 (30) days of pay, under California Labor Code section 203, as penalties for Plaintiffs ISAAC
4 BOBADILLA, BRIAN PARADIS and each former employee of Defendants who were not
5 paid all vested vacation wages.

6 121. Such a pattern, practice, and uniform administration of corporate policy
7 regarding illegal employee compensation as described herein is unlawful and creates an
8 entitlement to recovery by Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS in a civil
9 action for damages, wages owed, costs and attorneys' fees.

10 122. Pursuant to the civil penalties provided for in California Labor Code section
11 2699(f) and (g) and 558, the State of California, Plaintiffs and other aggrieved employees are
12 entitled to recover unpaid wages and civil penalties of one-hundred dollars (\$100) for each
13 aggrieved employee per pay period for the initial violation and two-hundred dollars (\$200) for
14 each aggrieved employee per pay period for each subsequent violation, plus costs and
15 attorneys' fees for violation of California Labor Code section 227.3.

16 EIGHTH CAUSE OF ACTION

17 Violation of California Labor Code § 1198 and

18 California Code of Regulations, Title 8, section 11070(5) —Unpaid Reporting Time Pay 19 (Against All Defendants)

20 123. Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS incorporate by
21 reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1
22 through 122.

23 124. California Labor Code section 1198 makes it illegal to employ an employee
24 under conditions of labor that are prohibited by the applicable wage order.

25 125. California Labor Code section 1198 requires that “. . . the standard conditions
26 of labor fixed by the commission shall be the . . . standard conditions of labor for employees.
27 The employment of any employee . . . under conditions of labor prohibited by the order is
28 unlawful.”

1 126. California Code of Regulations, Title 8, section 11070(5)(A) provides that
2 “[e]ach workday an employee is required to report for work and does report, but is not put to
3 work or is furnished less than half said employee’s usual or scheduled day’s work, the
4 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
5 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
6 shall not be less than the minimum wage.”

7 127. Defendants violated California Labor Code section 1198 and California Code
8 of Regulations, Title 8, section 11070(5) because Defendants failed to pay Plaintiffs ISAAC
9 BOBADILLA, BRIAN PARADIS and class members reporting time pay for a half day of
10 work on several occasion. Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class
11 members reported for work but were not put to work or were furnished less than half of their
12 usual or scheduled day of work. Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS, and
13 class members were not compensated with the required reporting time pay as required. For
14 example, Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS were sent home for
15 allegedly disciplinary reasons before having worked half of his scheduled shift and was
16 thereafter paid no reporting time pay.

17 128. Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members are
18 entitled to recover all remedies available for violations of California Labor Code section 1198
19 and California Code of Regulations, Title 8, section 11070(5).

20 129. Pursuant to the civil penalties provided for in California Labor Code sections
21 2699 (f) and (g) and 558, the State of California, Plaintiffs and other aggrieved employees are
22 entitled to recover unpaid wages and civil penalties of one hundred dollars (\$100) for each
23 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
24 each aggrieved employee per pay period for each subsequent violation, plus costs and
25 attorneys’ fees for violation of California Labor Code section 1198.
26
27
28

NINTH CAUSE OF ACTION
Violation of California Labor Code § 1198
and California Code of Regulations, Title 8, section 11070(14)—
Failure to Provide Seating
(Against All Defendants)

130. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 129.

131. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order.

132. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

133. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

134. California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

135. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14) because Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members were not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it would not interfere with the performance of their duties, nor were they provided with suitable seats. For instance, Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS were told and encouraged not to sit for allegedly customer service reasons.

136. Plaintiffs and class members are entitled to recover all remedies available for violations of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14).

137. Pursuant to the civil penalties provided for in California Labor Code sections 2699(f) and (g), the State of California, Plaintiffs and other aggrieved employees are entitled to recover civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 1198.

TENTH CAUSE OF ACTION

Violation of California Labor Code §§ 1194, 1197, 1197.1

(Against All Defendants)

138. Plaintiffs ISAAC BOBADILLA and BRIAN PARADIS incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 137.

139. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

140. During the relevant time period, Defendants regularly failed to pay minimum wage to Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1.

141. Defendants' failure to pay Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

142. Pursuant to California Labor Code section 1197.1, Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

143. Pursuant to California Labor Code section 1194.2, Plaintiffs ISAAC BOBADILLA, BRIAN PARADIS and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

144. Pursuant to the civil penalties provided for in California Labor Code section 2699(f) and (g) and 558, the State of California, Plaintiffs and other aggrieved employees are entitled to recover unpaid wages and civil penalties of one-hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two-hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code sections 1194, 1197, and 1197.1.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code sections 17200, *et seq.*

(Against all Defendants)

145. Plaintiffs incorporate by reference and re-allege as if fully stated herein the material allegations set out in paragraphs 1 through 144.

146. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to the Plaintiffs, class members, and the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

147. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

148. A violation of California Business & Professions Code sections 17200 *et seq.* may be predicated on the violation of any state or federal law. Here, Defendants' policies and practices of requiring non-exempt employees, including Plaintiffs and class members, to work

through their meal and rest periods without paying them proper compensation violates California Labor Code sections 226.7 and 512(a). Defendants' policies and procedures of failing to pay reporting time pay violates California Labor Code section 1198. Defendants' policies and practices of failing to timely pay wages upon termination violates California Labor Code sections 201 and 202. Defendants' policies and practices of failing to timely pay wages during employment violates California Labor Code section 204. Defendants' policies and practices of failing to compensate employees with minimum and overtime wages violates California Labor Code sections 510, 1194, 1197, 1197.1 and 1198. Defendants' policies and practices of failing to provide Plaintiffs and class members with suitable seating violates California Labor Code section 1198. Defendants' policies and practices of failing to pay vested vacation wages owed to Plaintiffs and class members upon termination violates California Labor Code section 227.3. Finally, Defendants' policies and practices of providing inaccurate wage statements violate California Labor Code section 226(a).

149. Plaintiffs and the putative class members have been personally aggrieved by Defendants' unlawful business acts and practices alleged herein, including but not necessarily limited to the loss of money or property.

150. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and the putative class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to class members; an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs, and on behalf of all others similarly situated, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, restitution, penalties, injunctive relief, and attorneys' fees in

1 excess of twenty-five thousand dollars (\$25,000) but under \$5,000,000. Plaintiffs reserve the
2 right to seek a different amount based on investigation and discovery.

3 **Class Certification**

- 4 2. That this action be certified as a class action;
- 5 3. That Plaintiffs be appointed as the representatives of each Class and subclass;
- 6 and
- 7 4. That counsel for Plaintiffs be appointed as Class Counsel.

8 **As to the First Cause of Action**

9 5. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
11 pay all overtime wages due to Plaintiffs and class members;

12 6. For general unpaid wages at overtime wage rates and such general and special
13 damages as may be appropriate;

14 7. For pre-judgment interest on any unpaid overtime compensation commencing
15 from the date such amounts were due;

16 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
17 California Labor Code section 1194(a); and

18 9. For unpaid wages and civil penalties pursuant to California Labor Code
19 sections 2699 (f) and (g) and 558 in the amount of one hundred dollars (\$100) for each
20 violation per pay period for the initial violation and two hundred dollars (\$200) for each
21 aggrieved employee per pay period for each subsequent violation, plus costs and attorneys'
22 fees for violation of California Labor Code sections 510 and 1198; and

23 10. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Second Cause of Action**

26 11. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 201, 202 and 203 by willfully failing to pay all compensation owed at the
28 time of termination of the employment of Plaintiffs and other terminated class members;

12. For all actual, consequential and incidental losses and damages, according to proof;

13. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For unpaid wages and civil penalties pursuant to California Labor Code section 2699(a), plus costs and attorneys' fees for violation of California Labor Code sections 201, 202 and 203; and

16. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by wilfully failing to pay all compensation owed at the time required by California Labor Code section 204, to Plaintiffs and class members;

18. For all actual, consequential and incidental losses and damages, according to proof;

19. For statutory wage penalties pursuant to California Labor Code section 210 for Plaintiffs and all other class members;

20. For pre-judgment interest on any untimely paid compensation, from the date such amounts were due;

21. For unpaid wages and civil penalties pursuant to California Labor Code section 2699(a), plus costs and attorneys' fees for violation of California Labor Code section 204; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to

provide all meal periods (including second meal periods) to Plaintiffs and class members;

24. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

25. For all actual, consequential and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid wages from the date such amounts were due;

28. For unpaid wages and civil penalties pursuant to California Labor Code sections 2600(f) and (g) and 558 in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code sections 226.7 and 512(a); and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and class members;

31. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For premiums pursuant to California Labor Code section 226.7(b);

34. For pre-judgment interest on any unpaid wages from the date such amounts were due;

35. For civil penalties pursuant to California Labor Code sections 2699(f) and (g) in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 226.7; and

36. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

37. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiffs and class members, and willfully failed to provide accurate itemized wage statements thereto;

38. For all actual, consequential and incidental losses and damages, according to proof;

39. For statutory penalties pursuant to California Labor Code section 226(e);

40. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h);

41. For civil penalties pursuant to California Labor Code sections 2699(f) and (g) in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 226(a); and

42. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

43. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 227.3 by failing to pay vested vacation wages owed to Plaintiffs and class members upon termination;

44. For all actual, consequential and incidental losses and damages, according to proof;

45. For all vacation wages owed (including, but not limited to, vacation pay, personal day pay, personal holiday pay, and/or floating holiday pay);

46. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

47. For civil penalties pursuant to California Labor Code sections 2699(f) and (g) in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 227.3; and

48. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

49. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5) by failing to provide Plaintiffs and class members with reporting time pay when Plaintiffs and class members reported for work but were not put to work or were furnished less than half of their usual or scheduled day or work.

50. For all actual, consequential and incidental losses and damages, according to proof;

51. For pre-judgment interest on any unpaid wages from the date such amounts were due;

52. For unpaid wages and civil penalties pursuant to California Labor Code sections 2699 (f) and (g) and 558 in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 1198; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14) by failing to allow Plaintiffs and aggrieved employees to sit if they were not engaged in active duties and failing to provide Plaintiffs and aggrieved employees with suitable seats;

55. For all actual, consequential and incidental losses and damages, according to proof;

56. For civil penalties pursuant to California Labor Code sections 2699(f) and (g) in the amount of one hundred dollars (\$100) for each violation per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code section 1198; and

57. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194, 1197, 1197.1 and applicable IWC Wage Orders by willfully failing to pay all minimum wages wages due to Plaintiffs and class members;

59. For all actual, consequential and incidental losses and damages, according to proof;

60. For penalties of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages pursuant to California Labor Code section 1197.1;

61. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to California Labor Code section 1194.2;

62. For unpaid wages and civil penalties pursuant to California Labor Code

1 sections 2699 (f) and (g) and 558 in the amount of one hundred dollars (\$100) for each
2 violation per pay period for the initial violation and two hundred dollars (\$200) for each
3 aggrieved employee per pay period for each subsequent violation, plus costs and attorneys'
4 fees for violation of California Labor Code section 1198; and,

5 63. For such other and further relief as the Court may deem equitable and
6 appropriate;

7 **As to the Eleventh Cause of Action**

8 64. That the Court declare, adjudge and decree that Defendants violated California
9 Business and Professions Code sections 17200 *et seq.* by violating the California Labor Code
10 as set forth above;

11 65. For restitution of unpaid wages to Plaintiffs and all class members and
12 prejudgment interest from the day such amounts were due and payable;

13 66. For the appointment of a receiver to receive, manage and distribute any and all
14 funds disgorged from Defendants and determined to have been wrongfully acquired by
15 Defendants as a result of violations of California Business & Professions Code sections 17200
16 *et seq.*;

17 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure section 1021.5;

19 68. For injunctive relief to ensure compliance with this section, pursuant to
20 California Business & Professions Code sections 17200 *et seq.*; and

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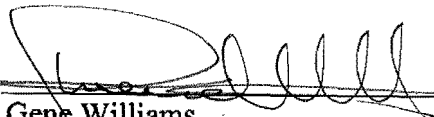
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1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

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4 Dated: March 20, 2012

Respectfully submitted,

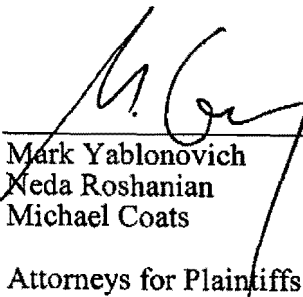
Initiative Legal Group APC

6
7 By: 

Gene Williams
Sue J. Kim
Alexandria Witte

9 Attorneys for Plaintiff Nicole Lopes

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11 Law Offices of Mark Yablonovich

12
13
14 By: 

Mark Yablonovich
Neda Roshanian
Michael Coats

16 Attorneys for Plaintiffs Isaac Bobadilla and
17 Brian Paradis
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On **March 22, 2012**, I served the document described as: **FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT** on the interested parties in this action by sending on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] as stated on the attached service list:

SEE ATTACHED SERVICE LIST

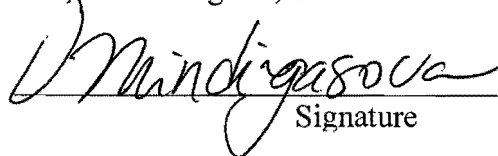
- [✓] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- [] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- [] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.
- [] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- [] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **22nd Day of March, 2012**, at Los Angeles, California.

Valentina Mindirgasova

Type or Print Name


Signature

SERVICE LIST

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