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VIA U.S. CERTIFIED MAIL—RETURN RECEIPT REQUESTED

January 29, 2016

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

Imperial Maintenance Services, Inc.
Alfonso Solis, Marc Lopez, Maria Perez, and Irma Solis
8830 Cherry Hills Pl.
Stockton CA 95209

Re: Labor Code § 2699 Notice by Aggrieved Employees

Dear PAGA Administrator, Imperial Maintenance Services, Inc., Alfonso Solis, Marc Lopez, Maria Perez and Irma Solis:

Please consider this a request under Labor Code § 2699.3(a)(1) for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against Imperial Maintenance Services, Inc., and their agents managers and supervisors (collectively "Imperial"), for violations of the California Labor Code described below. I am writing on behalf of, aggrieved employees Lidia Carbajal, Guadalupe Beltran and Ana Maria Sanchez represented by this law firm, who seek to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed at facilities or job sites operated by Imperial.

Further, pursuant to California Labor Code §§ 210, 558, 1197.1 and others please consider this a notice to Imperial, including all of their owners and their agents managers and supervisors and any other person acting on behalf of these entities and owners who violated, or caused to be violated, sections of the California Labor Code or Wage Orders governing hours and days of work as described below, including all managers, executives, agents, attorneys, contractors and

supervisors. This includes Imperial and other owners and managers including Alfonso Solis, Marc Lopez, Maria Perez, and Irma Solis. This letter is intended to put them on notice of these claims. Herein "Imperial" refers to all liable entities noted including managers, owners, supervisors and "persons," as defined by California Labor Code § 18.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Imperial to pay current and former California non-exempt employees (janitorial/cleaning workers) in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of Imperial's violations are unlawful payroll and labor practices or policies whereby workers are required, suffered or permitted to work without compensation; workers are not compensated for off-the-clock work done, are not provided appropriate rest and meal periods because their rest and meal periods are not scheduled or given, or because if and when they are given, such rest and meal breaks are untimely, interrupted or they are not of the required statutory length. Moreover, Imperial failed to record state and end times of employees' shifts and failed to record meal periods, which in turn resulted in Imperial failing to maintain daily time records. Imperial also failed to reimburse employees for necessary expenses incurred by Imperial employees. Those necessary expenses included the purchase and maintenance of uniforms, purchase of cleaning supplies and protective gear and mileage incurred for the use of personal vehicles for travel between worksite. After Imperial employees were terminated, they were not compensated for all wages earned as required by California law.

Additional facts and allegations will be set forth in Plaintiffs' forthcoming complaint. Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the policies described above and the violations set forth below relate to all the non-exempt employees employed at Imperial locations and worksites in California:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194 and 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by requiring, suffering or permitting employees to work without compensation for non piece rate work, and by failing to pay for all hours worked.
2. Failure to properly provide/authorize and permit non-exempt employees all required paid ten-minute rest breaks and proper timely 30-minute meal breaks to which they are entitled, in

violation of Labor Code and Wage Orders, in violation of Cal. Labor Code §§ 226.7, 512 and 558, and failure to pay premium rest and meal period wages.

3. Failure to keep accurate time records, in violation of the Labor Code and Wage Orders.
4. Failure to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202, 203, and 256 since it systematically failed to pay all wages earned and failed to pay all additional wages in lieu of providing all rest and meal periods.
5. Failure to keep accurate time records and failure to provide accurate wage statements that reflect the actual hours worked and amounts earned, including California Labor Code § 2699.5.
6. Failure to pay for all work completed at minimum wage, regular rate or at overtime.

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code.

Aggrieved employee noted above can be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 30 days, we will assume that we may pursue this action under the theories described above against Imperial and their managers, agents, owners and other liable persons and entities (pursuant to §210, 558 and 1197.1 (and other provisions)).

If you have any questions, please do not hesitate to contact me.

Sincerely,
MALLISON & MARTINEZ



Stan Mallison

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Attorneys for Plaintiffs

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN JOAQUIN

10
11
12
13 LIDIA CARBAJAL; GUADALUPE BELTRAN; and
14 ANA MARIA SANCHEZ, individually and acting in
the interest of other current and former employees,

15 Plaintiffs,

16 vs.

17
18 IMPERIAL MAINTENANCE SERVICES, INC;
ALFONSO SOLIS; MARC LOPEZ; MARIA PEREZ;
19 IRMA SOLIS; and DOES 1 through 20, inclusive,

20 Defendants.
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Case No.

COMPLAINT

CLASS ACTION

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Compensation;
3. Failure to Provide Rest or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Failure to Indemnify Employees for All Necessary Expenditures Or Losses Incurred
6. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
7. Failure to Pay All Wages Owed Upon Termination or Resignation
8. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
9. Penalties Pursuant to Labor Code's Private Attorney General Act, Cal. Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL
REQUEST FOR COMPLEX DESIGNATION

1 1. Plaintiffs LIDIA CARBAJAL, GUADALUPE BELTRAN, and ANA MARIA
2 SANCHEZ bring this action against Imperial Maintenance Services, Inc., Alfonso Solis, Marc
3 Lopez, Maria Perez, Irma Solis and Does 1 through 20, inclusive, individually and on behalf of all
4 other similarly situated individuals employed under common circumstances and facts. The
5 allegations made in this complaint are based on knowledge of Plaintiffs LIDIA CARBAJAL,
6 GUADALUPE BELTRAN, and ANA MARIA SANCHEZ, except those allegations made on
7 information and belief, which are based on the investigation of their counsel.

8
9 **I. NATURE OF THE ACTION**

10 2. This is a wage and hour class action to vindicate the rights afforded employees by
11 California labor law. This action is brought by Plaintiffs LIDIA CARBAJAL, GUADALUPE
12 BELTRAN, and ANA MARIA SANCHEZ for themselves and on behalf of a Class of similarly
13 situated individuals against Defendants Imperial Maintenance Services, Inc., Alfonso Solis, Marc
14 Lopez, Maria Perez, Irma Solis, and Does 1 through 20, inclusive (hereinafter collectively referred
15 to as "Defendants"). In an anticipated amended complaint, Plaintiffs' California Labor Code
16 Private Attorney General Act (§2698 et seq) ("PAGA") claims will be brought as an enforcement
17 action on behalf of the state for penalties and other remedies on behalf of the State of California
18 and current and former employees as expressly permitted by that statute. Plaintiff intends to
19 comply with all PAGA administrative requirements for this purpose.

20 3. This action revolves around the systematic failure by Defendants to pay California
21 non-exempt employees, including PLAINTIFFS and the Class, in conformance with California
22 law. Defendants Imperial Maintenance Services, inc. and alfonso solis have employed
23 PLAINTIFFS and the Class directly or as agents of one another and are referred to collectively
24 herein as "EMPLOYER DEFENDANTS." Defendants Alfonso Solis, Marc Lopez, Maria Perez,
25 and Irma Solis are sued pursuant to California Labor Code §558 (and other sections) and the
26 Private Attorneys General Act (California Labor Code §§ 2698 et seq.). PLAINTIFFS allege that
27 Alfonso Solis, Marc Lopez, Maria Perez, and Irma Solis are "persons" who violated or caused to
28 be violated sections of the California Labor Code. As such, Defendants Alfonso Solis, Marc Lopez,

1 Maria Perez, and Irma Solis are liable for penalties and wages which PLAINTIFFS may seek
2 through PAGA for themselves, current and former employees, and the State of California and is
3 sued solely pursuant to PAGA. Defendants Marc Lopez, Maria Perez, and Irma Solis, and the
4 EMPLOYER DEFENDANTS are collectively hereinafter referred to as the "PAGA
5 DEFENDANTS."

6 4. The core violations PLAINTIFFS allege against the EMPLOYER DEFENDANTS
7 are: (1) failure to pay all minimum and overtime wages owed; (2) failure to keep accurate time
8 records; (3) failure to provide rest or meal periods (or pay the statutory additional wages due); (4)
9 and failure to reimburse expenses incurred.

10 5. EMPLOYER DEFENDANTS have refused to pay the wages due and owed to
11 PLAINTIFFS and Class members under the express provisions of the California Labor Code,
12 which in turn has resulted in additional Labor Code violations entitling PLAINTIFFS and the Class
13 to prompt payment of wages and penalties. The PAGA DEFENDANTS caused the violations at
14 issue and benefitted financially from these violations.

15 6. As a result of the violations alleged herein, all Defendants are subject to PAGA
16 penalties, which PLAINTIFFS seek in this lawsuit for themselves, EMPLOYER DEFENDANTS'
17 current and former employees, and the State of California. PLAINTIFFS are aggrieved employees
18 within the meaning of Labor Code §§ 2698 et seq. and will comply with the pre-filing
19 requirements of PAGA. Pursuant to Labor Code § 2699.3(a), PLAINTIFFS will give written notice
20 by certified mail to Defendants and the California Labor & Workforce Development Agency
21 ("LWDA") of the wage and hour violations alleged herein and wait the statutorily required time.

22 7. PLAINTIFFS, for themselves and the Class, also seek injunctive relief requiring
23 each Defendant to comply with all applicable California labor laws and regulations in the future
24 and preventing the EMPLOYER DEFENDANTS from engaging in and continuing to engage in
25 unlawful and unfair business practices. PLAINTIFFS also seek declaratory relief enumerating
26 Defendants violations so that the Defendants and the general public will have clarity and guidance
27 with regards to Defendants' future employment practices.

1 **II. JURISDICTION AND VENUE**

2 8. PLAINTIFFS This case is subject to the jurisdiction of this court pursuant to the
3 California Labor Code, California Business and Professions Code, and California Code of Civil
4 Procedure. Defendants are all California Corporations, businesses, or DBA doing acts in San
5 Joaquin County, California. Defendants are qualified to do business in California and regularly
6 conduct business in San Joaquin County, California.

7 9. Federal courts may not exercise jurisdiction over this case pursuant to the Class
8 Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title
9 28 of the United States Code)(“CAFA”) because, as of the date of the filing and service of this
10 complaint and on information and belief, more than two-thirds of the members of all proposed
11 plaintiff classes in the aggregate, and the primary defendants, are citizens of California, the State in
12 which the action was originally filed. Alternatively, this case is not subject to jurisdiction in
13 federal court pursuant to CAFA because: (a) more than two-thirds of the members of the proposed
14 plaintiff class(es) in the aggregate are citizens of California where this case is originally filed; (b)
15 significant relief is sought from Defendants by members of the plaintiff class whose alleged
16 conduct forms a significant basis for the claims asserted by the proposed plaintiff class, (c) the
17 Defendants are citizens of California; (d) principal injuries resulting from the alleged conduct or
18 related conduct of Defendants was incurred in California, and (e) on information in belief, during
19 the 3-year period preceding the filing of this class action, no other class action has been filed
20 asserting the same or similar factual allegations against Defendants on behalf of the same or other
21 persons.

22 10. Venue is proper in this judicial district, pursuant to Code of Civil Procedure §395
23 because the County of San Joaquin is the county in which most of the Defendants reside and where
24 the majority of the acts occurred including the underlying policy decisions to intentionally violate
25 and permit the violation of the California Labor Code, California Contract law, and California
26 Business and Professions Code. PLAINTIFFS have worked for Defendants in San Joaquin
27 County.
28

1 **III. PARTIES**

2 **PLAINTIFFS**

3 11. Plaintiff LIDIA CARBAJAL ("CARBAJAL") is an individual residing in San
4 Joaquin County. She was employed as a non-exempt employee by EMPLOYER DEFENDANTS
5 in and around the Counties of San Joaquin and other adjacent Counties until approximately May
6 2015. Plaintiff CARBAJAL is an aggrieved employee who has been subjected to the violations
7 and unlawful employment practices described herein, and who, as a result, has suffered injury in
8 fact and has lost money or property.

9 12. Plaintiff GUADALUPE BELTRAN ("BELTRAN") is an individual residing in San
10 Joaquin County. She was employed as a non-exempt employee by EMPLOYER DEFENDANTS
11 in and around the Counties of San Joaquin and other adjacent Counties until the approximately
12 May 2015. Plaintiff BELTRAN is an aggrieved employee who has been subjected to the violations
13 and unlawful employment practices described herein, and who, as a result, has suffered injury in
14 fact and has lost money or property.

15 13. Plaintiff ANA MARIA SANCHEZ ("SANCHEZ") is an individual residing in San
16 Joaquin County. She was employed as a non-exempt employee by EMPLOYER DEFENDANTS
17 in and around the Counties of San Joaquin and other adjacent Counties until the approximately
18 May 2015. Plaintiff SANCHEZ is an aggrieved employee who has been subjected to the violations
19 and unlawful employment practices described herein, and who, as a result, has suffered injury in
20 fact and has lost money or property.

21
22 **DEFENDANTS**

23 14. The following allegations as to Defendants are made on information and belief, and
24 are likely to have evidentiary support after a reasonable opportunity for further investigation or
25 discovery.

26 15. On information and belief, Imperial Maintenance Services, Inc. ("IMPERIAL") is a
27 California corporation that operates a janitorial/cleaning business, employing PLAINTIFFS and
28 the Class of non-exempt employees PLAINTIFFS seek to represent in this lawsuit. IMPERIAL

operates out of its business address listed with the California Secretary of State, which is 8830 Cherry Hills Pl, Stockton, CA 95209. The agent for service of process is ALFONSO SOLIS, 8830 Cherry Hills Pl, Stockton, CA 95209. Defendant ALFONSO SOLIS is the Chief Executive Officer ("CEO") of IMPERIAL.

16. On information and belief, Defendant ALFONSO SOLIS is a person who violated or caused the violations of the California Labor Code and provisions regulating hours and days of work as detailed in the applicable Industrial Welfare Commission Order. At all relevant times, ALFONSO SOLIS has been the CEO for IMPERIAL; he has had complete authority over all labor policies and practices, including those resulting in violations as described in this complaint; and he has actively violated or caused the violations alleged herein.

17. On information and belief, Defendant ALFONSO SOLIS is a person who violated or caused the violations of the California Labor Code and provisions regulating hours and days of work as detailed in the applicable Industrial Welfare Commission Order. At all relevant times, ALFONSO SOLIS has been the CEO for IMPERIAL; he has had complete authority over all labor policies and practices, including those resulting in violations as described in this complaint; and he has actively violated or caused the violations alleged herein.

18. On information and belief, IMPERIAL and ALFONSO SOLIS jointly employ the Class including PLAINTIFFS, and each is the agent, subsidiary, parent entity, owner and/or joint venturer of each other, and each is responsible for the violations alleged herein. At all relevant times to this action, EMPLOYER DEFENDANTS have been enterprises that employed PLAINTIFFS and the Class within the meaning of California law.

19. PLAINTIFFS are ignorant of the true names or capacities of the Defendants sued herein under the fictitious names of DOES 1 through 20, inclusive, and therefore sue Defendants under such fictitious names. Plaintiffs will amend this complaint to allege the true names or capacities of these Defendants once they have been ascertained. PLAINTIFFS are informed and believe and thereon allege that each Defendant is responsible in some manner for the occurrences herein alleged, and that the damages herein alleged were actually and proximately caused by each Defendants' conduct.

1 20. PLAINTIFFS are informed and believe and thereon allege that at all times
2 mentioned herein, Defendants, including Does, were acting as the agent of every other Defendant,
3 and all acts alleged to have been committed by any Defendant were committed on behalf of every
4 other Defendant; and, at all times mentioned herein, each alleged act was committed by each
5 Defendant and/or agent, servant, or employee of each Defendant, and each Defendant directed,
6 authorized or ratified each such act. Plaintiffs are informed and believe and thereon allege that
7 each Defendant, including Does, was the agent, employee, co-conspirator, business affiliate,
8 subsidiary, parent entity, owner and/or joint venturer of each other Defendant; and, in causing the
9 injuries herein alleged, each Defendant was acting at least in part within the course and scope of
10 such agency, employment, conspiracy, joint employership, alter ego status, and/or joint venture,
11 and with the permission and consent of each of the other Defendants.

12 21. PLAINTIFFS and the Class bring this action pursuant to the California Labor Code
13 and IWC wage orders, seeking unpaid minimum wages, regular wages, premium overtime wages,
14 rest and meal period wages, statutory penalties, liquidated damages, declaratory, injunctive and
15 other equitable relief, interest, reasonable attorneys' fees, and costs of suit.

16 22. PLAINTIFFS and the Class, pursuant to the Unfair Competition Law ("UCL"),
17 Business and Professions Code §§ 17200 et seq., also seek injunctive relief, declaratory relief,
18 restitution, and restitutionary disgorgement of all wages earned by PLAINTIFFS and the CLASS
19 but retained by EMPLOYER DEFENDANTS as a result of their failure to comply with the above
20 laws. PLAINTIFFS and the Class are also entitled to attorneys' fees, costs and interest pursuant to
21 the private attorney provisions of California Code of Civil Procedure § 1021.5.

22 23. PLAINTIFFS and the Class also bring this action against all DEFENDANTS
23 pursuant to the California Labor Code Private Attorneys General Act, §§ 2698 et seq. This act
24 provides additional derivative remedies for all of the violations described in this Complaint.
25 Defendants ALFONSO SOLIS, MARC LOPEZ, MARIA PEREZ, and IRMA SOLIS are
26 individually liable for the violations herein alleged under PAGA and through, among other
27 provisions, California Labor Code § 558, which provides for individual liability for all persons
28 who violate or cause to be violated provisions of the California Labor Code and California

1 Regulations, including IWC wage orders.

2 **IV. FACTUAL BACKGROUND**

3 24. The claims of this lawsuit spring from a pattern of employer misconduct and
4 wrongdoing that is a characteristic of the labor system utilized by Defendants, where unpaid and
5 improperly paid labor, as alleged herein, is a common business practice. Defendants' actions in
6 this case demonstrate a systematic disregard for the rights afforded to Plaintiffs and the Class under
7 California wage and hour law. The following paragraphs detail specific violations of law giving
8 rise to this action.

9 25. For at least four years prior to the filing of this action and through to the present
10 (liability period for the UCL cause of action), EMPLOYER DEFENDANTS maintained and
11 enforced against PLAINTIFFS and the Class unlawful practices and policies in violation of
12 California wage and hour laws, including but not limited to:

- 13 a. forcing Class members, including PLAINTIFFS, to work "off the clock"
14 time without compensation, including but not limited to time spent pre- and
15 post-shift and time spent onsite during meal periods as required by
16 DEFENDANTS and under their control, in violation of California law and
17 public policy;
- 18 b. failing to provide Class members, including PLAINTIFFS, rest periods of at
19 least (10) minutes per four (4) hours worked, or major fraction thereof, and
20 failing to pay such employees one (1) hour of additional wages at the
21 employees' regular rate of compensation for each workday that the rest
22 period was not provided, in violation of California law and public policy;
- 23 c. requiring Class members, including PLAINTIFFS, to work at least five (5)
24 hours without a full, thirty-minute, uninterrupted meal period, and failing to
25 pay such employees one (1) hour of additional wages at the employees'
26 regular rate of compensation for each workday that the meal period was not
27 provided, in violation of California state laws and public policy;
- 28 d. failing to provide Class members, including PLAINTIFFS, with accurate

- 1 itemized wage statements in violation of California law and public policy;
- 2 e. failing to maintain accurate time-keeping records for Class members,
- 3 including PLAINTIFFS, in violation of California law and public policy;
- 4 f. failing to properly pay Class members, including PLAINTIFFS, time and a
- 5 half and double overtime pursuant to California Labor Code provisions and
- 6 Industrial Welfare Commission Wage Orders 5-2001 or 16-2001, in
- 7 violation of California law and public policy;
- 8 g. failing to reimburse Class members, including PLAINTIFFS, for expenses
- 9 incurred for the purchase and maintenance of uniforms, cleaning supplies
- 10 and protective gear, and/or mileage for the use of personal vehicles for travel
- 11 between worksites in violation of California law and public policy; and
- 12 h. failing to pay to Class members, including PLAINTIFFS, statutory penalties
- 13 pursuant to California Labor Code §§ 201, 202, 203, and 226, in violation of
- 14 California law and public policy.

15 26. On information and belief, EMPLOYER DEFENDANTS were on notice of the

16 improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful

17 and unfair business practices.

18 27. EMPLOYER DEFENDANTS have made it difficult to account with precision for

19 the unlawfully withheld wages due to PLAINTIFFS and the Class during all relevant times herein,

20 because EMPLOYER DEFENDANTS did not fully implement and preserve a record-keeping

21 method to accurately record all hours worked and wages earned by its employees as required for

22 non-exempt employees by California Labor Code §§ 226 and 1174(d), and Industrial Welfare

23 Commission Wage Orders 5 & 16.

24 **V. CLASS ACTION ALLEGATIONS**

25 28. PLAINTIFFS bring this action on behalf of themselves and all others similarly

26 situated as a class action pursuant to §382 of the Code of Civil Procedure. PLAINTIFFS seek to

27 represent the following "Class" composed of and defined as follows:

28 All non-exempt persons who are employed or have been employed by
DEFENDANTS in the State of California who, within four (4) years of the

1 filing of this Complaint, have worked as non-exempt Janitorial/Utility
2 workers.

3 29. PLAINTIFFS reserve the right under Rule 1855(b), California Rules of Court, to
4 amend or modify the class description with greater specificity to further divide into subclasses or to
5 limit to particular issues.

6 30. This action has been brought and may properly be maintained as a class action
7 under the provisions of §382 of the Code of Civil Procedure because there is a well-defined
8 community of interest in the litigation and the proposed Class is easily ascertainable.

9 **A. Numerosity**

10 31. The potential members of the Class as defined are so numerous that joinder of all
11 the members of the Class is impracticable. While the precise number of Class Members has not
12 been determined at this time, PLAINTIFFS are informed and believes that DEFENDANTS have
13 employed dozens of janitorial/utility employees in the State of California and who are, or have
14 been, affected by DEFENDANTS' unlawful practices as alleged herein.

15 32. Upon information and belief, PLAINTIFFS allege that DEFENDANTS'
16 employment records would provide information as to the number and location of all Class
17 Members. Joinder of all members of the proposed Class is not practicable.

18 **B. Commonality**

19 33. There are questions of law and fact common to the Class predominating over any
20 questions affecting only individual Class Members. These common questions of law and fact
21 include, without limitation:

- 22 a. Whether DEFENDANTS violated the California Labor Code, wage
23 orders, and public policy by failing to compensate PLAINTIFFS and
24 the other Class members for all hours worked;
- 25 b. Whether DEFENDANTS violated the California Labor Code, wage
26 orders, or public policy by failing to provide daily rest periods to
27 PLAINTIFFS and the other Class members for every four hours or
28 major fraction thereof worked and failing to compensate said employees
one hours of additional wages in lieu of each rest period denied;

- 1 c. Whether DEFENDANTS violated the California Labor Code, wage
2 orders, or public policy by failing to provide a meal period to
3 PLAINTIFFS and the other Class members on days they worked work
4 periods in excess of five hours and failing to compensate said
5 employees one hour additional wages in lieu of each meal period
6 denied, and by deducting for lunch periods that were not taken;
- 7 d. Whether DEFENDANTS violated the California Labor Code, wage
8 orders, or public policy by failing to reimburse employees for necessary
9 costs incurred by PLAINTIFFS and the other Class members for the
10 purchase and maintenance of uniforms, cleaning supplies and protective
11 gear, and/or mileage for the use of personal vehicles for travel between
12 worksites;
- 13 e. Whether DEFENDANTS violated the California Labor Code, wage
14 orders, or public policy by failing to, among other things, maintain and
15 provide accurate records of PLAINTIFFS' and the other Class
16 members' earned wages and work periods, accurately itemizing in wage
17 statements all hours worked and wages earned, and accurately
18 maintaining records pertaining to PLAINTIFFS and the other Class
19 members;
- 20 f. Whether DEFENDANTS violated the California Labor Code, wage
21 orders, or public policy by failing to pay all earned wages and/or
22 premium wages due and owing at the time that any Class member's
23 employment with DEFENDANTS terminated;
- 24 g. Whether DEFENDANTS violated the California Labor Code, wage
25 orders, or public policy by willfully refusing to pay all wages due;
- 26 h. Whether DEFENDANTS committed unfair or unlawful business
27 practices in violation of section 17200 *et seq.* of the Business and
28 Professions Code.

C. Typicality

34. The claims of the named PLAINTIFFS are typical of the claims of the Class.
PLAINTIFFS and all members of the Class sustained injuries and damages arising out of and

1 caused by DEFENDANTS' common course of conduct in violation of California laws, regulations,
2 and public policy as alleged herein.

3 **D. Adequacy of Representation**

4 35. PLAINTIFFS will fairly and adequately represent and protect the interests of the
5 members of the Class. Counsel who represent PLAINTIFFS are competent and experienced in
6 litigating large employment class actions.

7 **E. Superiority of Class Action**

8 36. A class action is superior to other available means for the fair and efficient
9 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
10 questions of law and fact common to the Class predominate over any questions affecting only
11 individual members of the Class. Each member of the Class has been damaged and is entitled to
12 recovery by reason of DEFENDANTS' unlawful policy and/or practice of failing to compensate
13 Class Members for all wages earned and due and engaging in the other unlawful practices herein
14 complained of.

15 37. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 PLAINTIFFS are unaware of any difficulties that are likely to be encountered in the management
18 of this action that would preclude its maintenance as a class action.

19 **VI. CAUSES OF ACTION**

20 **FIRST CLAIM FOR RELIEF**

21 **FAILURE TO PAY MINIMUM WAGE**

22 (CAL. LAB. CODE §§ 1197, 1194(A), 1194.2 & WAGE ORDER 5)

23 (AGAINST EMPLOYER DEFENDANTS)

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

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

26 The minimum wage for employees fixed by the commission is the minimum wage
27 to be paid to employees, and the payment of a less wage than the minimum so fixed
28 is unlawful.

1 40. The applicable minimum wage fixed by the commission for janitor/utility workers
2 (Wage Orders 5) was set at six dollars and seventy five cents (\$6.75) per hour for all hours worked
3 effective January 1, 2002, but has been recently amended. The minimum wage effective January 1,
4 2007 was \$7.50 per hour, and the minimum wage has now been raised to \$8.00 per hour, effective
5 January 1, 2008.

6 41. The Defendants failed to pay minimum wage for all hours worked. In particular,
7 PLAINTIFFS and the Class were required to work on a schedule that did not take into account
8 actual hours worked. For example, PLAINTIFFS and the Class were not paid for the substantial
9 amount of time for having to work pre- and post-shift and for having to work through meal period
10 during their meal periods while under the control of Defendants and for the benefit of the same.
11 Regardless of the time at which PLAINTIFFS and Class members arrived at a particular jobsite,
12 they were not paid until the time predetermined by work schedules. Hours worked were not
13 accurately recorded, since Defendants do not provide a mechanism for recording time
14 contemporaneously as shifts actually begin and end. And Defendants systematically deducted a
15 30-minute meal period from each employee's workday, regardless of whether it was taken, and
16 consequently PLAINTIFFS and the Class were not compensated for time actually spent working.
17 These practices, among others, resulted in Defendants not paying the minimum wage for all hours
18 worked. This violation of California minimum wage law was substantial and occurred on a daily
19 basis due to Defendants' employment practices.

20 42. As a result of Defendants' violations of the minimum wage, by failing to record and
21 pay minimum wage for all hours worked, Defendants violated California Labor Code §226(a),
22 inaccurately stating gross wages earned, total hours work, deductions, net wages and other issues
23 as described above.

24 43. Defendants have the ability to pay minimum wages for all time worked but have
25 willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness
26 to PLAINTIFFS and the Class for all hours worked, and intending to annoy harass, oppress, hinder
27 delay or defraud PLAINTIFFS and the Class, in violation of California Labor Code §226.6.

28 44. California Labor Code §226.6 states:

1 Any employer who knowingly and intentionally violates the provisions of Section
2 226 or 226.2, or any officer, agent, employee, fiduciary, or other person who has the
3 control, receipt, custody, or disposal of, or pays, the wages due any employee, and
4 who knowingly and intentionally participates or aids in the violation of any
5 provision of Section 226 or 226.2 is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned
not to exceed one year, or both, at the discretion of the court. That fine or
imprisonment, or both, shall be in addition to any other penalty provided by law.

6 Defendants' violation of § 226 also constitutes a misdemeanor, pursuant to §226.6, a predicate
7 violation of California Business & Profession Code §§ 17200, and a predicate violation of Labor
8 Code §2699.

9 45. The Minimum Wage provisions of California Labor Code are enforceable by
10 private civil action pursuant to California Labor Code §1194(a), which states:

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

15 As such, PLAINTIFFS and the Class may bring this action for minimum wages, interest, costs of
16 suit and attorney's fees pursuant to California Labor Code § 1194(a).

17 46. As described in California Labor Code § 1194.2, any such action incorporates the
18 applicable wage order of the California Labor Commission. California Labor Code § 1194.2
19 states:

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

23 47. As described herein, this is an action under California Labor Code §1194 to recover
24 wages on account of Defendants' failure to pay minimum wages as described in California Labor
25 Code §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Order 5.
26 Therefore, PLAINTIFFS and the Class are also entitled to recover liquidated damages in an
27 amount equal to the wages unlawfully unpaid and interest thereon.

28 48. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and

below.

SECOND CLAIM FOR RELIEF

**FAILURE TO PAY OVERTIME COMPENSATION
(CALIFORNIA LABOR CODE §§ 510, 1194 & 1194.2)**

(AGAINST EMPLOYER DEFENDANTS)

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

50. California Labor Code § 510(a) states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

See also California Labor Code § 1185; Industrial Welfare Commission Wage Orders 5 and 16. California Labor Code § 500 defines, "Workday" and "Day" to mean any consecutive 24-hour period commencing at the same time each calendar day, and defines "workweek" and "week" to mean "any seven consecutive days starting with the same calendar day each week."

51. As described herein, Defendants violated California Labor Code § 510 and the applicable wage order by employing PLAINTIFFS and the Class in excess of the above requirements with out overtime and doubletime pay.

52. PLAINTIFFS and the Class may enforce these provisions pursuant to Labor Code including § 1194(a), as well as Business and Professions Code §§ 17200 et seq.

53. California Labor Code §1194(a) states:

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

As a result, PLAINTIFFS and the Class are entitled to the unpaid balance of the full amount of the

1 above noted overtime compensation, interest, reasonable attorney's fees and costs of suit.

2 54. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and
3 below.

4 **THIRD CLAIM FOR RELIEF**

5 **FAILURE TO PROVIDE REST PERIODS PAY ADDITIONAL WAGES IN LIEU**
6 **THEREOF**

7 (CALIFORNIA LABOR CODE §§ 226.7)

8 (AGAINST EMPLOYER DEFENDANTS)

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

10 56. Defendants did not authorize or permit PLAINTIFFS and, on information and
11 belief, the Class to take all required rest periods. PLAINTIFF and, on information and belief, the
12 Class routinely worked four-hour periods during the day without rest periods or compensation in
13 lieu thereof. Defendants' employment practices did not provide for rest periods as mandated by
14 California law.

15 57. California Labor Code §226.7 states:

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

18 (b) If an employer fails to provide an employee a meal period or rest period in
19 accordance with an applicable order of the Industrial Welfare Commission, the
20 employer shall pay the employee one additional hour of pay at the employee's
21 regular rate of compensation for each work day that the meal or rest period is not
22 provided.

23 58. The applicable wage order issued by the Industrial Welfare Commission is Wage
24 Order 5, which states with regards to rest periods:

25 (A) Every employer shall authorize and permit all employees to take rest periods,
26 which insofar as practicable shall be in the middle of each work period. The
27 authorized rest period time shall be based on the total hours worked daily at the rate
28 of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1)

1 hour of pay at the employee's regular rate of compensation for each work day that
2 the rest period is not provided.

3 59. Defendants violated California law by failing to provide rest periods mandated by
4 Labor Code § 226.7 and Wage Orders 5 and others, and by failing to provide one hour pay at the
5 employees' regular rate of compensation for each work day that a required rest period was not
6 provided.

7 60. PLAINTIFFS and, on information and belief, the Class did not voluntarily or
8 willfully waive rest periods. Any express or implied waivers obtained from PLAINTIFFS and
9 Class members were not willfully obtained, was not voluntarily agreed to, was a condition of
10 employment, or part of a contract of an unlawful adhesion.

11 61. By failing to keep adequate time records required by sections 226 and 1174(d) of
12 the Labor Code, Defendants have injured PLAINTIFFS and the Class and made it difficult to
13 calculate the unpaid rest period compensation due PLAINTIFFS and the Class.

14 62. As a result of the unlawful acts of Defendants, PLAINTIFFS and the Class have
15 been deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of
16 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code
17 §§203, 226, 226.7, 512, 1194, and Wage Order 5, and others.

18 63. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and
19 below.

20 **FOURTH CLAIM FOR RELIEF**

21 **FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU**
22 **THEREOF**

23 (CALIFORNIA LABOR CODE §§ 226.7, 512)

24 (AGAINST EMPLOYER DEFENDANTS)

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

26 65. PLAINTIFFS and, on information and belief, the Class were not afforded meal
27 periods as required by California law, since they were routinely required to work five hours or
28 more without a full, thirty minute, uninterrupted meal period, and they were not compensated for

1 these missed meal periods.

2 66. California Labor Code §226.7 states:

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

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

8 67. The applicable wage order issued by the Industrial Welfare Commission is Wage
9 Order 5. Wage Order 5 states with regards to meal periods:

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

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

19 A similar provision is contained at California Labor Code § 512.

20 68. In this case, there was no mutual waiver of meal period and employees worked for
21 periods of more than five hours without an off-duty meal period of at least 30 minutes. As noted
22 above, Defendants violated California law by failing to provide meal periods mandated by Labor
23 Code § 226.7 and the wage orders. As such, Defendants are liable for one hour of pay at the
24 employee's regular rate of compensation for each workday that meal periods were not provided.

25 69.

26 70. As noted above, Defendants violated California law by failing to provide the meal
27 and rest periods mandated by Labor Code § 226.7 and Wage Orders 5, and by failing to provide
28

1 one hour pay at the employees' regular rate of compensation for each work day that the meal
2 period was not provided.

3 71. PLAINTIFFS and, on information and belief, the Class did not voluntarily or
4 willfully waive meal periods. Any express or implied waivers obtained from PLAINTIFFS and
5 the Class was not willfully obtained, was not voluntarily agreed to, was a condition of
6 employment, or part of a contract of an unlawful adhesion.

7 72. By failing to keep adequate time records required by sections 226 and 1174(d) of
8 the Labor Code, Defendants have injured PLAINTIFFS and the CLASS and made it difficult to
9 calculate the unpaid meal period compensation due PLAINTIFFS and the Class.

10 73. As a result of the unlawful acts of Defendants, PLAINTIFFS and the Class have
11 been deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of
12 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code
13 §§203, 226, 226.7, 512, 1194, and Wage Order 16.

14 74. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and
15 below.

16 **FIFTH CLAIM FOR RELIEF**

17 **FAILURE TO INDEMNIFY EMPLOYEES FOR ALL NECESSARY EXPENDITURES OR**
18 **LOSSES INCURRED**

19 (LABOR CODE § 2802)

20 (AGAINST EMPLOYER DEFENDANTS)

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

22 76. Labor Code § 2802 required Defendants to indemnify PLAINTIFFS and the Class
23 for all necessary expenditures or losses incurred by these employees in direct consequence of the
24 discharge of his or her duties.

25 77. PLAINTIFFS and the Class were required to provide their own uniforms necessary
26 to perform their duties and maintained them, provide cleaning supplies and protective gear as
27 directed by Defendants, and/or were required to use their personal vehicles for travel between
28

1 worksites without reimbursement by Defendants for mileage/cost incurred for said use.

2 78. Defendants failed to provide to PLAINTIFFS and the Class with all cleaning
3 supplies, protective gear, and/or failed to provide transportation between worksites that were
4 necessary to perform their duties as directed by Defendants and further failed to indemnify
5 PLAINTIFFS and the Class for all necessary expenditures and losses incurred by PLAINTIFFS
6 and the Class for the benefit of Defendants and to their detriment. As a result, PLAINTIFFS and
7 the Class were required to supply all their own cleaning supplies, protective gear and/or
8 transportation between worksites. Defendants did not provide all required cleaning supplies,
9 protective gear, and/or transportation between worksites and did not reimburse PLAINTIFFS and
10 the Class for said expenses.

11 79. As a direct and proximate cause of Defendants' failure to indemnify employees,
12 PLAINTIFFS and the CLASS incurred out of pocket expenses and suffered a loss of wages in an
13 amount to be proven at trial.

14 **SIXTH CLAIM FOR RELIEF**

15 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
16 **EMPLOYEE WAGE STATEMENT PROVISIONS**

17 (LABOR CODE §§ 226(b), 1174, 1175)

18 (AGAINST EMPLOYER DEFENDANTS)

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

20 81. California Labor Code Section 226(a) states:

21 Every employer shall, semimonthly or at the time of each payment of wages,
22 furnish each of his or her employees, either as a detachable part of the check, draft,
23 or voucher paying the employee's wages, or separately when wages are paid by
personal check or cash, an accurate itemized statement in writing showing

24 i) gross wages earned,

25 ii) total hours worked by the employee, except for any employee whose
26 compensation is solely based on a salary and who is exempt from payment
27 of overtime under subdivision (a) of Section 515 or any applicable order of
the Industrial Welfare Commission,

- 1 iii) the number of piece-rate units earned and any applicable piece rate if
2 the employee is paid on a piece-rate basis,
- 3 iv) all deductions, provided that all deductions made on written orders of
4 the employee may be aggregated and shown as one item,
- 5 v) net wages earned,
- 6 vi) the inclusive dates of the period for which the employee is paid,
- 7 vii) the name of the employee and his or her social security number,
8 except that by January 1, 2008, only the last four digits of his or her social
9 security number or an employee identification number other than a social
10 security number may be shown on the itemized statement,
- 11 viii) the name and address of the legal entity that is the employer, and
- 12 ix) all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the employee.
14 The deductions made from payments of wages shall be recorded in ink or
15 other indelible form, properly dated, showing the month, day, and year, and
16 a copy of the statement or a record of the deductions shall be kept on file by
17 the employer for at least three years at the place of employment or at a
18 central location within the State of California.

19 82. Defendants failed to provide "accurate itemized statements" to employees,
20 including PLAINTIFFS and the Class, because the wage statements:

- 21 a. Falsely understated the gross wages earned, since the amount did not
22 account for all hours worked; and
- 23 b. Omitted or falsely understated the total hours worked by PLAINTIFFS and
24 the Class, by under-reporting or ignoring the total of hours actually worked, and
25 because there was no system for employees to record hours contemporaneously as
26 they began, ended and worked their shifts.

27 As a result, the wage statements also falsely understated the "number of hours worked at
28 each hourly rate" and falsely stated the net wages earned.

 83. California Labor Code § 226(e) and (g) provide for the remedy for the violations
described above:

- (e) An employee suffering injury as a result of a knowing and intentional failure by
an employer to comply with subdivision (a) is entitled to recover the greater of all
actual damages or fifty dollars (\$50) for the initial pay period in which a violation
occurs and one hundred dollars (\$100) per employee for each violation in a
subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
(\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

1 (g) An employee may also bring an action for injunctive relief to ensure compliance
2 with this section, and is entitled to an award of costs and reasonable attorney's fees.

3 84. Section 1174 of the California Labor Code, and Section 7 of Wage Order 5, require
4 EMPLOYER DEFENDANTS to maintain and preserve, in a centralized location, among other
5 items, records showing the names and addresses of all employees employed, payroll records
6 showing the hours worked daily by and the wages paid to its employees. The Wage Orders also
7 require that the employer keep accurate information showing when each employee begins and ends
8 each work period, meal periods, and total daily hours worked." Defendants have created a uniform
9 practice of knowingly and intentionally failing to comply with Labor Code § 1174. Defendants'
10 failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175. When an
11 employer fails to keep such records, employees may establish the hours worked solely by their
12 testimony and the burden of overcoming such testimony shifts to the employer. Hernandez v.
13 Mendoza, 199 Cal. App. 3d 721 (1988).

14 85. By failing to keep adequate time records required by §§ 226 and 1174 (d) of the
15 Labor Code, Defendants have injured PLAINTIFFS and the Class and made it difficult to calculate
16 the unpaid wages due, and PLAINTIFFS and the Class are entitled to up to \$4,000.00 in penalties.

17 86. WHEREFORE, PLAINTIFFS requests relief as described herein and below on
18 behalf of the Class.

19 **SEVENTH CLAIM FOR RELIEF**

20 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION OR RESIGNATION**
21 **(CALIFORNIA LABOR CODE §§ 201, 202 & 203)**

22 **(AGAINST EMPLOYER DEFENDANTS)**

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

24 88. California Labor Code §§ 201 and 202 provide for immediate payment of all wages
25 owed at termination of employment.

26 89. Defendants required PLAINTIFFS and the Class to work without compensating
27 them for all wages as described in this complaint and failed to pay these wages at the termination
28

1 of these employees. Consequently, Defendants have violated California Labor Code §§ 201 and/or
2 202.

3 90. California Labor Code §203 states:

4 If an employer willfully fails to pay, without abatement or reduction, in accordance
5 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is
6 discharged or who quits, the wages of the employee shall continue as a penalty from
7 the due date thereof at the same rate until paid or until an action therefor is
8 commenced; but the wages shall not continue for more than 30 days. An employee
9 who secretes or absents himself or herself to avoid payment to him or her, or who
10 refuses to receive the payment when fully tendered to him or her, including any
11 penalty then accrued under this section, is not entitled to any benefit under this
12 section for the time during which he or she so avoids payment. Suit may be filed for
13 these penalties at any time before the expiration of the statute of limitations on an
14 action for the wages from which the penalties arise.

11 91. Defendants willfully failed to pay all wages due as the failure to pay was not
12 inadvertent or accidental. As a result, PLAINTIFFS and the Class are entitled to 30 days' wages.
13 "30 days wages" is calculated pursuant to California case law as 30 working days and not merely a
14 month's wages.

15 92. In calculating 30 days wages pursuant to California Labor Code § 203,
16 PLAINTIFFS and the Class are entitled to compensation for all forms of wages earned (even if not
17 properly paid), including, but not limited to, compensation for unprovided rest periods and
18 unprovided meal periods, compensation for work done at hourly rates below the minimum and
19 overtime wages, and other compensation due but not received.

20 93. More than 30 working days have passed since PLAINTIFFS and many members of
21 the Class have has left EMPLOYER DEFENDANTS' employ, and despite this, they have not
22 received payment pursuant to Labor Code § 203. As a consequence of Defendants' willful conduct
23 in not paying all earned wages, PLAINTIFFS and the Class are entitled to 30 days' wages as a
24 penalty under Labor Code § 203 for failure to pay legal wages.

25 94. WHEREFORE, PLAINTIFFS and the Class seek the relief as described herein and
26 below.

1 **EIGHTH CLAIM FOR RELIEF**

2 **VIOLATION OF UNFAIR COMPETITION LAW**
3 **(CALIFORNIA BUS. & PROF. CODE §§ 17200 *ET SEQ.*)**

4 **(AGAINST EMPLOYER DEFENDANTS)**

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

6 96. On information and belief, by their policies described above, Defendants engaged in
7 unlawful activity prohibited by Business and Professions Code §§ 17200 et seq. The actions of
8 Defendants as alleged within this Complaint, constitute unlawful and unfair business practices,
9 within the meaning of Business and Professions Code §§ 17200 et seq and have suffered injury and
10 have lost money or property as a result of Defendants failure to comply with well established labor
11 laws.

12 97. As a result of their unlawful acts, Defendants have reaped and continue to reap
13 unfair benefits and unlawful profits at the expense of PLAINTIFFS and the Class. Defendants
14 should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to
15 PLAINTIFFS and the Class the wrongfully withheld wages pursuant to Business and Professions
16 Code § 17203. PLAINTIFFS are informed and believe and thereon allege that Defendants are
17 unjustly enriched through these unlawful practices.

18 98. The unlawful conduct alleged herein is continuing, and there is no indication that
19 Defendants will not continue such activity in the future. PLAINTIFFS allege that if Defendants
20 are not enjoined from the conduct set forth in this Complaint, DEFENDANTS will continue these
21 violations.

22 99. PLAINTIFFS further request that the court issue a preliminary and permanent
23 injunction requiring Defendants to comply with the recording keeping requirements under
24 California Labor Laws and providing required safety equipment.

25 100. WHEREFORE, PLAINTIFFS for themselves and the Class they seek to represent
26 request injunctive, declaratory, and restitutionary relief as described herein and below.

27 **NINTH CLAIM FOR RELIEF**

28 **VIOLATIONS OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

1 (CALIFORNIA LABOR CODE §§ 2698 *ET SEQ.*)

2 (AGAINST ALL DEFENDANTS INCLUDING JOHN REDFERN)

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

4 102. PLAINTIFFS will bring this claim for themselves and other current and former
5 employees, as expressly authorized by Labor Code §§ 2699 et seq. PAGA is an enforcement
6 action that empowers an aggrieved employee to seek penalties on behalf of themselves, current and
7 former employees and the State, without the need to certify a class. For purposes of this claim only,
8 therefore, PLAINTIFFS will bring this claim for themselves and other current and former
9 employees and need not comply with Class Action Certification.

10 103. PLAINTIFFS are aggrieved employees as defined in Labor Code §2699(a). They
11 will bring this cause on behalf of themselves and other current or former aggrieved employees
12 affected by the labor law violations alleged in this complaint.

13 104. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 will be
14 satisfied by written notice by certified mail to all Defendants and to the Labor and Workforce
15 Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein.
16 PLAINTIFFS will amend their Complaint should the LWDA refuse to timely investigate these
17 violations.

18 105. PLAINTIFFS will seek civil penalties as provided under applicable Labor Code
19 sections for violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the
20 extent that any violation alleged herein does not carry a penalty, PLAINTIFFS will seek civil
21 penalties pursuant to Labor Code § 2699(f) for PLAINTIFFS, other current or former employees
22 and the State for violations of those sections.

23 106. Labor Code § 2699(f) provides:

24 For all provisions of this code except those for which a civil penalty is
25 specifically provided, there is established a civil penalty for a violation
26 of these provisions, as follows: . . . (2) If, at the time of the alleged
27 violation, the person employs one or more employees, the civil penalty is
28 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.

1 107. PLAINTIFFS will seek penalties due from all Defendants on behalf of themselves,
2 other aggrieved employees and the State, as provided by Labor Code § 2699(i), including but not
3 limited to, penalties due pursuant to Labor Code § 558(a) as a result of Defendants' violation of the
4 provisions of the Labor Code and Wage Order 5.

5 108. All Defendants are liable to PLAINTIFFS and "other current or former employees
6 and the state" for the civil penalties arising from the violations alleged in this Complaint.

7 PLAINTIFFS are also entitled to an award of attorneys' fees and costs as set forth below.

8 109. PLAINTIFFS, and on behalf of themselves and other current or former employees,
9 request relief as described below.

10
11 **VI. PRAYER**

12 110. WHEREFORE, PLAINTIFFS pray for judgment for PLAINTIFFS and the Class as
13 follows:

- 14 1. For compensatory damages in an amount according to proof with interest thereon;
- 15 2. For economic and/or special damages in an amount according to proof with interest
16 thereon;
- 17 3. For a declaratory judgment that Defendants violated the rights of PLAINTIFFS and
18 the Class under the California Labor Code, and applicable wage orders as set forth in
19 the preceding paragraphs;
- 20 4. For an award to PLAINTIFFS and the Class of statutory damages or, in the
21 alternative, actual damages for Defendants' violations of the California Labor Code;
- 22 5. That Defendants be found to have engaged in unfair competition in violation of
23 California Business and Professions Code §§ 17200 *et seq.*;
- 24 6. That DEFENDANT EMPLOYERS be ordered and enjoined to make restitution to
25 PLAINTIFFS and the Class due to their unfair competition, including restitutionary
26 disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation,
27 and benefits, pursuant to California Business and Professions Code §§ 17203 and
28 17204;

1 7. That DEFENDANT EMPLOYERS be enjoined from continuing the unlawful
2 course of conduct alleged herein;

3 8. For premium pay and statutory penalties pursuant to Labor Code § 203, excluding
4 any penalties available solely through the procedures detailed in Labor Code §§ 2698 *et*
5 *seq.*;

6 9. For premium wages pursuant to Labor Code §§ 226 and 226.7;

7 10. For minimum wages pursuant to Labor Code §§ 1197, 1194(a), 1194.2, and the
8 Wage Orders;

9 11. For liquidated damages pursuant to the Labor Code § 1194.2;

10 12. For penalties pursuant to Labor Code § 226.

11 13. For attorneys' fees, interests, and costs of suit under the California Labor Code
12 including §§ 226, 1194, and pursuant to the private attorney provisions of California
13 Code of Civil Procedure § 1021.5.

14 14. For unpaid wages, liquidated damages, penalties and other relief as provided by the
15 California Labor Code.

16 15. For such other and further relief as the Court deems just and proper excluding any
17 penalties available solely through the procedures detailed in Labor Code §§ 2698 *et seq.*

18 16. For penalties for the State, Plaintiffs and other current or former employees
19 pursuant to the Labor Code Private Attorney General Act.

20
21 **VII. DEMAND FOR JURY TRIAL**

22 111. PLAINTIFFS hereby demand trial of their claims and of the Class by jury to the
23 extent authorized by law.

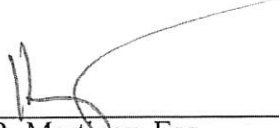
1 Dated: January 29, 2016

MALLISON & MARTINEZ

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By: 

Hector R. Martinez, Esq.
Attorneys for Plaintiffs

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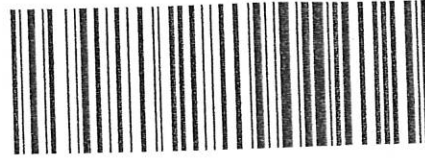
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PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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Attorneys at Law
Mallison & Martinez
1939 Harrison St Ste 730
Oakland CA 94612

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OAKLAND DISTRICT OFFICE
LABOR STANDARDS ENFORCEMENT

FEB - 2 2016

RETURN RECEIPT REQUESTED

RECEIVED
DEPT. OF INDUSTRIAL RELATIONS

SHIP TO:

ATTENTION: PAGA ADMINISTRATOR
ACTING AGENCY SECRETARY
CALIFORNIA LABOR & WORKFORCE DEVELOPMENT
1515 CLAY ST STE 801
OAKLAND CA 94612-1463

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