

James R. Hawkins (SBN 192925)
James@jameshawkinsaplc.com
Alaine Patti-Jelsvik (SBN 194748)
Alaine@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff XAVIER NUNEZ,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

XAVIER NUNEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

NEVELL GROUP, INC., a California
Corporation, and DOES 1-100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
06/09/2015 at 09:38:00 AM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

Case No. 30-2015-007832269-CU-OE-CXC

CLASS ACTION

Assigned To: Judge Thierry Patrick Colaw
Dept.: CX105

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) FAILURE TO PROVIDE MEAL PERIODS;**
- (2) FAILURE TO AUTHORIZE AND PERMIT REST PERIODS;**
- (3) FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS;**
- (4) FAILURE TO TIMELY PAY ALL WAGES OWED AT SEPARATION; AND**
- (5) UNFAIR COMPETITION**
- (6) PRIVATE ATTORNEYS GENERAL ACT OF 2004 LABOR CODE § 2698, ET. SEQ.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff XAVIER NUNEZ ("Plaintiff"), individually, and on behalf of others similarly situated, and asserts claims against defendants NEVELL GROUP, INC., a California corporation, ("Nevell Group") and DOES 1-100, inclusive (collectively "Defendants") as follows:

1 I.

2 **INTRODUCTION**

3 1. This is a Class Action, pursuant to California Code of Civil Procedure section 382,
4 on behalf of Plaintiff and all employees, including but not limited to all employees not classified
5 as “exempt” or primarily employed in executive, professional, or administrative capacities who
6 are employed or were formerly employed by Nevell Group as non-exempt construction worker
7 employees or related positions with similar job duties at any of its California locations (“Class
8 Members” or “Nevell Group Non-Exempt Employees”).

9 2. During the “liability period,” as defined as the applicable statute of limitations for
10 each and every cause of action contained herein, i.e. Plaintiff’s claims under the Unfair
11 Competition Law is four (4) years; Plaintiff’s claim for either unpaid wages or actual damages is
12 three (3) years; and Plaintiff’s claims for statutory penalties is one (1) year from the filing of this
13 action to the present and through resolution of this action (“the liability period(s)”), Defendants
14 consistently maintained and enforced against its Nevell Group Non-Exempt Employees unlawful
15 practices and policies in violation of California state wage and hour laws, including failing to
16 provide required meal and rest periods and failing to accurately pay all employees premium
17 wages for each day on which a meal and/or rest period violation occurred. Defendants also failed
18 to timely pay all wages owed upon separation and failed to furnish accurate, itemized wage
19 statements to Nevell Group Non-Exempt Employees.

20 3. Defendants set up and enforced schedules, policies, and workload requirements
21 wherein Plaintiff and Class Members were regularly not provided with a first uninterrupted meal
22 period of at least 30 minutes during shifts of greater than five hours.

23 4. Defendants also did not authorize and permit ten-minute rest periods for every four
24 hours worked or major fraction thereof.

25 5. Defendants have also consistently failed to timely pay such premium wages owed
26 at separation and thus also failed to furnish accurate, itemized wage statements reflecting all
27 wages owed. Such violations have resulted, at least in part, from Defendants’ consistent decision
28 not to pay Non-Exempt Employees premium wages for non-provided meal and rest periods.

6. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203, 218.5, 218.6, 226, 226.7, 512, 1174, 1174.5, 1194, 1194.5, 2698 *et seq.*, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid overtime wages, and meal period and rest period compensation, interest thereon, penalties and reasonable attorneys' fees and costs.

7. Plaintiff, on behalf of himself and all others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendants for their failure to pay to Plaintiff and Class Members all of their wages earned including overtime wages and meal and rest period premiums.

II.

JURISDICTION AND VENUE

8. This class action is brought pursuant to California Code of Civil Procedure, section 382. The monetary damages and restitution sought by Plaintiff exceed the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

9. This Court has jurisdiction over this action pursuant to the California Constitution Article VI section 10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

10. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over them by the California Courts consistent with traditional notions of fair play and substantial justice. Further, Defendants have done and are doing business in California and in Orange County by maintaining and operating a number of Nevell Group facilities in California. The unlawful acts alleged herein have a direct effect on Plaintiff and the other similarly situated Non-Exempt Employees within Orange County and throughout the State of California and

1 Defendants have employed hundreds of Class Members as Non-Exempt Employees in Orange
2 County and throughout California.

3 11. The California Superior Court also has jurisdiction in this matter because the
4 individual claims of the Class Members described herein are presently believed to be under the
5 \$75,000.00 jurisdictional threshold for Federal Court and the aggregate potential damages and
6 recovery by all of the claims of the Plaintiff's Class, including attorneys' fees, placed in
7 controversy by Plaintiff's class-wide claims, is presently believed to be under the \$5 million
8 dollar threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at
9 issue, as the issues herein are based solely on California statutes and law, including the Labor
10 Code, IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and
11 the California Business and Professions Code.

12 12. Venue is proper in this Court because upon information and belief, one or more of
13 the Defendants transact business, or have offices in this County and the acts or omissions alleged
14 herein took place in this County.

15 III.

16 PARTIES

17 13. Plaintiff worked as a non-exempt construction worker employee, as a pre-
18 apprentice carpenter for Defendants with responsibilities to stock material and clean up job sites
19 for Defendant.

20 14. Upon information and belief, Defendant, Nevell Group, Inc. is a California
21 corporation in good standing and authorized to do business in California and operates in Orange
22 County and throughout California. Upon further information and belief, Plaintiff alleges that at
23 all relevant times referenced herein Defendants did and continue to transact business throughout
24 California.

25 15. In this Complaint, wherever reference is made to any act, deed, or conduct of
26 Defendants, the allegation means Defendants, and each of them, engaged in the act, deed, or
27 conduct by or through one or more of Nevell Group officers, directors, agents, employees, or
28 representatives, who was actively engaged in the management, direction, control, or transaction

1 of Defendants' ordinary business and affairs.

2 16. The true names and capacities of Defendants, whether individual, corporate,
3 associate, or otherwise, sued herein as DOES 1 through 100, inclusive, are currently unknown to
4 Plaintiff, who therefore sues Defendants by such fictitious names under California Code of Civil
5 Procedure § 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true
6 names and capacities of the Defendants designated hereinafter as DOES when such identities
7 become known.

8 17. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
9 the partners, agents, or principals and co-conspirators of Nevell Group, and of each other; that
10 Nevell Group and the Doe Defendants performed the acts and conduct herein alleged directly,
11 aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
12 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
13 of the liability of the Defendants as alleged herein.

14 18. Plaintiff is further informed and believes, and thereon alleges, that at all times
15 material herein, each Defendant was dominated or controlled by its co-Defendants and each was
16 the alter ego of the other. Whenever and wherever reference is made in this complaint to any
17 conduct by Defendant or Defendants, such allegations and references shall also be deemed to
18 mean the conduct of each of the Defendants, acting individually, jointly, and severally.
19 Whenever and wherever reference is made to individuals who are not named as Defendants in this
20 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant
21 times acted on behalf of Defendants named in this complaint within the scope of their respective
22 employments.

23 **IV.**

24 **FACTUAL ALLEGATIONS**

25 19. Plaintiff and Class Members were or are currently employed by Nevell Group in
26 non-exempt, non-managerial positions and similar and incidental positions related to Nevell
27 Group's business.

1 20. At all times set forth herein, Defendants employed Plaintiff and Class Members in
2 the capacity of hourly-paid construction workers for Defendants or equivalent positions with
3 similar or closely related job duties, however titled, throughout the state of California.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
5 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
6 of the requirements of California's wage and employment laws.

7 22. During the relevant time frame, Defendants compensated Plaintiff and Class
8 Members based upon an hourly rate.

9 23. During the relevant time frame, Defendants failed to maintain accurate time
10 records showing all hours worked by Plaintiff and Class Members.

11 24. Upon information and belief, during the relevant time frame, Defendants
12 maintained a series of policies that effectively coerced and pressured its Non-Exempt Employees
13 to shorten or forego meal and rest periods.

14 25. Upon information and belief, during the relevant time frame, Defendants
15 maintained and enforced an aggressive set of demands with respect to the goals and duties for its
16 Non-Exempt Employees, thereby requiring Plaintiff and Class Members to interrupt, shorten,
17 and/or forego their lawful meal periods of 30 uninterrupted minutes relieved of all duty.

18 26. Despite the above-mentioned meal period violations, Defendants never
19 compensated Plaintiff, and on information and belief, never compensated Class Members one
20 additional hour of pay at their regular rate, as required by California law when meal periods were
21 not provided.

22 27. Upon information and belief, during the relevant time frame, Defendants
23 maintained and enforced a schedule and policies that consistently required Plaintiff and Class
24 Members to forego their lawful rest periods of ten minutes for every four hours worked or major
25 fraction thereof.

26 28. Despite the above-mentioned rest-period violations, Defendants never
27 compensated Plaintiff, and on information and belief, never compensated Class Members, one
28 additional hour of pay, at their regular rate, as required by California law for each day on which

rest periods were not authorized and/or permitted.

29. Defendants failed to properly provide all authorized meal and rest periods owed to Plaintiff and other Class members, and failed to pay one (1) hour wages in lieu of each non-provided meal period and each non-provided rest period. In addition, Defendants have made it difficult to account with precision for the unlawfully withheld wages owed to Plaintiff and Class Members during the liability period and failed to implement and preserve a lawful record-keeping method to record all non-provided meal and rest periods owed to employees, as required for Non-Exempt Employees by California Labor Code section 226 and applicable California Wage Orders. Plaintiff and Class Members are therefore also entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(e).

30. Plaintiff is informed and believes, and thereon alleges, that Defendants know, should know, knew, and/or should have known that Plaintiff and the other Class Members were entitled to receive premium wages under Labor Code section 226.7(b), but were not receiving accurately calculated compensation.

31. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew that they had a duty to accurately compensate Plaintiff and Class Members for all hours worked including overtime wages and meal and rest period premiums, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

32. Plaintiff and Class Members are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

V.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

34. All claims alleged herein arise under California law, for which Plaintiff seeks

1 relief as authorized by California law.

2 35. The proposed class is comprised of and defined as: **Any and all persons who are**
3 **or were employed by the Defendants as non-exempt construction worker employees or**
4 **equivalent and/or related construction positions with similar or related job duties, however**
5 **titled, at any of Defendants' California locations within four (4) years prior to the filing of**
6 **the Complaint in this action until the resolution of this lawsuit (collectively "Class" or**
7 **"Class Members").**

8 36. Plaintiff also seeks to represent Subclasses, included in the Plaintiff's Class, which
9 are composed of Class Members satisfying the following definitions:

10 a. All Class Members who worked more than five (5) hours in a workday and
11 were not provided with an uninterrupted meal period of 30 minutes, or compensation in lieu
12 thereof (collectively "**Meal Period Subclass**");

13 b. All Class Members who are or were employed by Defendants and who
14 worked more than three and one half (3 ½) hours in a workday without being permitted or
15 authorized to take one ten minute rest period for ever four hours worked, or major fraction thereof
16 (collectively "**Rest Period Subclass**");

17 c. All Class Members who resigned or whose employment was terminated at
18 any time within three (3) years prior to filing of the Complaint in this action until resolution of
19 this lawsuit who were not timely paid all wages due to them upon separation from Defendants'
20 employment (collectively "**Waiting Time Subclass**");

21 d. All Class Members who were not provided lawful, accurate, itemized wage
22 statements (collectively "**Inaccurate Wage Statement Subclass**"); and

23 e. All Class Members who were employed by Defendants and subject to
24 Defendant's Unfair Business Practices (collectively "**Unfair Business Practices Subclass**").

25 37. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
26 or modify the descriptions of the Class and Subclasses to provide greater specificity if it should
27 be deemed necessary by the Court or to further divide the Class Members into additional
28 Subclasses or to limit the Subclasses to particular issues.

1 38. As set forth in further detail below, this action has been brought and may properly
2 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
3 because there is a well-defined community of interest in the litigation and the proposed Class and
4 Subclasses are easily ascertainable.

5 a. Numerosity: The members of the Class and Subclasses are so numerous
6 that joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
7 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
8 Class is estimated to be greater than 100 individuals, and the identity of such membership is
9 readily ascertainable by inspection of Defendants' employment records.

10 b. Commonality: There are common questions of law and fact as to the Class
11 and Subclasses that predominate over questions affecting only individual Class Members. These
12 common questions of law and fact include, without limitation:

13 1) Whether Defendants failed to provide meal periods in accordance with
14 Labor Code section 512 and the applicable Industrial Welfare Commission ("IWC") wage order;

15 2) Whether Defendant failed to authorize and permit rest periods in
16 accordance with the California Labor Code and the applicable IWC wage order;

17 3) Whether Defendants failed to comply with accurate, itemized wage
18 statements in accordance with Labor Code section 226;

19 4) Whether Defendants failed to timely pay all wages upon separation in
20 accordance with Labor Code section 203; and

21 5) Whether Defendants engaged in unfair competition in violation of
22 California Business & Professions Code sections 17200, et seq.; and

23 6) The appropriate amount of damages, restitution, and/or monetary penalties
24 resulting from Defendants' violations of California law.

25 c. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
26 the interests of each member of the Class and Subclasses with whom he has a well-defined
27 community of interest. Plaintiff's claims herein alleged are typical of those claims which could
28 be alleged by any member of the Class and/or Subclasses, and the relief sought is typical of the

1 relief which would be sought by each member of the Class and/or Subclasses in separate actions.
2 All members of the Class and/or Subclasses have been similarly harmed by Defendants' denial of
3 meal and rest periods, failure to timely pay all wages owed at separation, and failure to provide
4 accurate itemized wage statements, all due to Defendants' policies and practices that affected
5 each member of the Class and/or Subclasses similarly. Further, Defendants benefited from the
6 same type of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

7 d. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
8 the interests of each member of the Class and/or Subclasses with whom he has a well defined
9 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
10 that he has an obligation to make known to the Court any relationships, conflicts, or differences
11 with any member of the Class and/or Subclasses, and no such relationships or conflicts are
12 currently known to exist. Plaintiff's attorneys and the proposed counsel for the Class and
13 Subclasses are versed in the rules governing class action discovery, certification, litigation, and
14 settlement and experienced in handling such matters. Other former and current employees of
15 Defendants may also serve as representatives of the Class and Subclasses if needed.

16 e. Superiority: The nature of this action makes the use of class action
17 adjudication superior to other methods. A class action will achieve economies of time, effort,
18 judicial resources, and expense, which would not be achieved with separate lawsuits. The
19 prosecution of separate actions by individual members of the Class and/or Subclasses would
20 create a risk of inconsistent and/or varying adjudications with respect to the individual members
21 of the Class and/or Subclasses, establishing incompatible standards of conduct for the
22 Defendants, and resulting in the impairment of the rights of the members of the Class and/or
23 Subclasses and the disposition of their interests through actions to which they were not parties.
24 Thus, a class action is superior to other available means for the fair and efficient adjudication of
25 this controversy because individual joinder of all Class Members is not practicable, and questions
26 of law and fact common to the Class predominate over any questions affecting only individual
27 Class Members. Each member of the Class has been damaged and is entitled to recovery by
28 reason of Defendants' unlawful policies and practices, including denying Class Members meal

1 and rest periods without legal compensation. Class action treatment will allow those similarly
2 situated persons to litigate their claims in the manner that is most efficient and economical for
3 both parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be
4 encountered in the management of this action that would preclude its maintenance as a class
5 action.

6 f. Public Policy Considerations: Employers in the state of California violate
7 employment and labor laws every day. However, current employees are often afraid to assert
8 their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
9 actions because they believe their former employers may damage their future endeavors through
10 negative references and/or other means. The nature of this action allows for the protection of
11 current and former employees' rights without fear of retaliation or damage. Additionally, the
12 citizens of California have a significant interest in ensuring employers comply with California's
13 labor laws and in ensuring those employers who do not are prevented from taking further
14 advantage of their employees.

15 **VI.**

16 **CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PROVIDE MEAL PERIODS**

19 **(On Behalf of the Plaintiff and Meal Period Classes)**

20 **(Against All Defendants)**

21 1. Plaintiff repeats and incorporates herein by reference each and every allegation set
22 forth above, as though fully set forth herein.

23 2. Labor Code section 226.7(a) provides that "No employer shall require any
24 employee to work during any meal or rest period mandated by an applicable order of the
25 Industrial Welfare Commission."

26 3. Labor Code section 512 provides that "An employer may not employ an employee
27 for a work period of more than five hours per day without providing the employee with a meal
28

1 period of not less than 30 minutes, except that if the total work period per day of the employee is
2 no more than six hours, the meal period may be waived by mutual consent of both the employer
3 and employee.”

4 4. Labor Code section 512 further provides, “An employer may not employ an
5 employee for a work period of more than 10 hours per day without providing the employee with a
6 second meal period of not less than 30 minutes, except that if the total hours worked is no more
7 than 12 hours, the second meal period may be waived by mutual consent of the employer and the
8 employee only if the first meal period was not waived.”

9 5. Labor Code section 516 provides that the Industrial Welfare Commission may
10 adopt or amend working condition orders with respect to meal periods for any workers in
11 California consistent with the health and welfare of those workers.

12 6. Section 11(A) of the IWC Wage Order(s) provides, “Unless the employee is
13 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
14 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duty and when by
16 written agreement between the parties an on-the-job paid meal period is agreed to. The written
17 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

18 7. Section 11(B) of the IWC Wage Order(s) provides, “If an employer fails to provide
19 an employee a meal period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 8. The members of the Meal Period Class consistently worked over five (5) hours per
23 shift and therefore were entitled to a meal period of not less than thirty (30) minutes prior to
24 exceeding five (5) hours of employment.

25 9. Further, on informed belief, some members of the Meal Period Class consistently
26 worked over ten (10) hours per shift and therefore were entitled to a second meal period of not
27 less than 30 minutes.
28

1 10. The members of the Meal Period Class did not waive their second meal periods, by
2 mutual consent with Defendants or otherwise when working more than twelve (12) hours in a
3 workday.

4 11. As a matter of Defendants' established company policy, Defendants failed to
5 comply with the meal period requirements established by Labor Code section 226.7, Labor Code
6 section 512, Labor Code section 516 and Section 11 of the IWC Wage Order(s).

7 12. Pursuant to Section 11(B) of the IWC Wage Order(s) and Labor Code section
8 226.7(b) which reads, "if an employer fails to provide an employee a meal or rest period in
9 accordance with an applicable order of the industrial Welfare Commission, the employer shall
10 pay the employee one additional hour of pay at the employee's regular rate of compensation for
11 each work day that the meal or rest period is not provided," the members of the Meal Period Class
12 are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's
13 regular rate of compensation for each work day that the meal period was not provided.
14

15 13. Pursuant to Labor Code section 218.6 and Civil Code section 3287, the members of
16 the Meal Period Class seek recovery of pre-judgment interest on all amounts recovered herein.
17

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO AUTHORIZE AND PERMIT PAID REST PERIODS**

20 **(On Behalf of Plaintiff and the Rest Period Classes)**

21 **(Against All Defendants)**

22 14. Plaintiff repeats and incorporates herein by reference each and every allegation set
23 forth above, as though fully set forth herein.

24 15. Labor Code section 226.7(a) reads, "No employer shall require any employee to
25 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
26 Commission."

27 16. Labor Code section 516 provides that the Industrial Welfare Commission may
28 adopt or amend working condition orders with respect to break periods for any workers in

1 California consistent with the health and welfare of those workers.

2 17. Section 12(A) of the IWC Wage Order(s) reads, "Every employer shall authorize
3 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
4 of each work period. The authorized rest period time shall be based on the total hours worked
5 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
6 However, a rest period need not be authorized for employees whose total daily work time is less
7 than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked
8 for which there shall be no deduction from wages."

9 18. Section 12(B) of the IWC Wage Order(s) reads, "If an employer fails to provide an
10 employee a rest period in accordance with the applicable provisions of this order, the employer
11 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
12 each workday that the rest period is not provided."

13 19. The members of the Rest Period Class consistently worked over four (4) hours per
14 shift and therefore were entitled to a rest period of not less than ten (10) minutes prior to
15 exceeding four (4) hours of employment.

16 20. As a matter of Defendants' established company policy, Defendants failed to
17 authorize and permit the required rest periods established by Labor Code section 226.7 and Labor
18 Code section 516 and Section 12 of the IWC Wage Order(s).

19 21. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code section
20 226.7(b) which reads "if an employer fails to provide an employee a meal or rest period in
21 accordance with an applicable order of the Industrial Welfare Commission, the employer shall
22 pay the employee one additional hour of pay at the employee's regular rate of compensation for
23 each work day that the meal or rest period is not provided," the members of the Rest Period Class
24 are entitled to damages in an amount equal to one (1) additional hour of pay at each employee's
25 regular rate of compensation for each work day that the rest period was not so provided.

26 22. Pursuant to Labor Code section 218.6 and Civil Code section 3287, the members
27 of the Rest Period Class seek recovery of pre-judgment interest on all amounts recovered herein.
28

THIRD CAUSE OF ACTION
FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(On Behalf of Plaintiff and Wage Statement Class)
(Against All Defendants)

23. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

24. Labor Code section 226(a) reads in pertinent part, “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or his employees, either as a detachable part of the check, draft, 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 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee....”.

25. Further, the IWC Wage Orders section 7(A) reads in pertinent part: “(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates of pay....”

26. Labor Code section 1174 of the California also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is

1 unlawful pursuant to Labor Code section 1175.

2 27. Therefore, pursuant to Labor Code sections 226(a) and 1174 and the IWC Wage
3 Orders section 7(A), California employers are required to maintain accurate records pertaining to
4 the total hours worked for Defendants by the members of the Wage Statement Class, including
5 but not limited to, beginning and ending of each work period, meal period and split shift interval,
6 the total daily hours worked, and the total hours worked per pay period and applicable rates of
7 pay.

8 28. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
9 Wage Orders section 7(A), Defendants did not and still do not furnish each of the members of the
10 Wage Statement Class with accurate itemized statements, in writing showing accurately (1) all
11 applicable hourly rates in effect during each respective pay period and the corresponding number
12 of hours worked, at each hourly rate, by each respective individual as well as meal and rest period
13 premiums.

14 29. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
15 Wage Orders section 7(A), Defendants, did not and do not maintain accurate records pertaining to
16 the total hours worked for Defendants by the members of the Wage Statement Class, including
17 but not limited to, beginning and ending of each work period, meal period and split shift interval,
18 the total daily hours worked, and the total hours worked per pay period and applicable rates of
19 pay.
20

21 30. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
22 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
23 Class in that the members of the Wage Statement Class were not timely provided written accurate
24 itemized statements showing all requisite information, including but not limited to total hours
25 worked by the employee, and all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate, in violation of Labor Code section
27 226 and the IWC Wage Orders section 7(A), such that the members of the Wage Statement Class
28 were misled by Defendants as to the correct information regarding various items, including but

1 not limited to total hours worked by the employee, net wages earned and all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate.

4 31. Pursuant to Labor Code section 226(e), the members of the Wage Statement Class
5 are entitled to fifty dollars (\$50.00) per employee for the initial pay period in which a violation
6 hereunder occurs and one hundred dollars (\$100.00) per employee for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty of \$4,000.00.

8 32. Pursuant to Labor Code section 226(g), the currently employed members of the
9 Wage Statement Class are entitled to injunctive relief to ensure Defendants' compliance with
10 Labor Code section 226.

11 33. Pursuant to Labor Code section 226(e) and/or section 226(g), the members of the
12 Wage Statement Class are also entitled to an award of costs and reasonable attorneys' fees.

13 **FOURTH CAUSE OF ACTION FOR FAILURE TO**
14 **TIMELY PAY ALL WAGES OWED AT SEPARATION**

15 **By Plaintiff and Class Against All Defendants**

16 39. Plaintiff repeats and incorporates herein by reference each and every allegation set
17 forth above, as though fully set forth herein.

18 40. Labor Code sections 201-202 requires an employer who discharges an employee to
19 pay compensation due and owing to said employee immediately upon discharge, and that if an
20 employee voluntarily leaves his or his employment, his or his wages shall become due and
21 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
22 of his or his intention to quit, in which case the employee is entitled to his or his wages on their
23 last day of work.

24 41. Labor Code section 203 provides that if an employer willfully fails to pay
25 compensation promptly upon discharge, as required by Labor Code sections 201-202, the
26 employer is liable for waiting time penalties in the form of continued compensation for up to 30
27 work days.

1 42. During the liability period, Defendants willfully failed and refused, and continue to
2 willfully fail and refuse, to pay Plaintiff and members of the Waiting Time Subclass their wages,
3 earned and unpaid, either at the time of discharge, or within 72 hours of their voluntarily leaving
4 of Defendants' employment. These wages include unpaid meal and rest period premiums as
5 described above. The shift schedules and work requirements which Defendants implemented and
6 enforced did not provide Plaintiff and the members of the Plaintiffs' Class with all rest periods
7 and meal periods they were authorized to take, and accordingly any members of the Plaintiffs'
8 class who worked such shift schedules and were discharged or resigned from Defendant's
9 employment during the liability periods have not received such compensation for all rest periods
10 and meal periods and unpaid overtime wages that Defendants failed to provide.

11 43. Upon information and belief, more than 30 days have passed since the affected
12 Waiting Time Subclass Members, including Plaintiff, have left Defendants' employment, and on
13 information and belief, they have not received payment of all compensation owed to them by
14 Defendants.

15 44. Defendants' willful failure to pay Plaintiff and the Waiting Time Subclass
16 Members their wages earned and unpaid at the time of discharge, or within 72 hours of their
17 voluntarily leaving Defendants' employment, violates Labor Code sections 201-202.

18 45. As a result of their above described actions, Defendants are liable to Plaintiff and
19 members of the Waiting Time Subclass for waiting time penalties pursuant to Labor Code
20 section 203 in an amount according to proof at the time of trial.

21 **FIFTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **By Plaintiff and Class Against All Defendants**

24 46. Plaintiff repeats and incorporates herein by reference each and every allegation set
25 forth above, as though fully set forth herein.

26 47. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
27 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
28 general public. Plaintiff also seeks to enforce important rights affecting the public interest within

1 the meaning of the California Code of Civil Procedure section 1021.5.

2 48. Defendants' policies, activities, and actions as alleged herein are violations of
3 California law and constitute unlawful business acts and practices in violation of California
4 Business and Professions Code sections 17200, *et seq.*

5 49. A violation of California Business and Professions Code sections 17200, *et seq.*,
6 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
7 policy and practice of failing to accurately pay Plaintiff and Class Members overtime wages over
8 the past four (4) years violates Labor Code section 1194, section 1198 and section 510.
9 Defendants' policy of failing to lawfully provide Plaintiff and the Class with meal periods or one
10 (1) hour of premium pay when a meal period was not lawfully provided violates Labor Code
11 section 512, and section 226.7. Defendants' policy of failing to authorize and permit a ten-minute
12 rest period for every four hours worked or major fraction thereof, or one (1) hour of premium pay
13 when a rest period was not lawfully permitted or authorized violates the Labor Code and
14 implementing Wage Order.

15 50. Plaintiff and Class Members have each been personally aggrieved by Defendants'
16 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
17 property.

18 51. Pursuant to California Business and Professions Code sections 17200, *et seq.*,
19 Plaintiff and Class Members are entitled to restitution of the wages withheld and retained by
20 Defendants during a period that commences four (4) years prior to the filing of this complaint; an
21 award of attorneys' fees pursuant to Labor Code section 1194 and California Code of Civil
22 Procedure section 1021.5; interest; and an award of costs.

23 **SIXTH CAUSE OF ACTION- REPRESENTATIVE ACTION**

24 **PRIVATE ATTORNEYS' GENERAL ACT OF 2004,**

25 **LABOR CODE 2698, ET. SEQ.**

26 **By Representative Plaintiff Against All Defendants**

27 52. Plaintiff repeats and incorporates herein by reference each and every allegation
28 contained above, as though fully set forth herein.

1 53. Pursuant to Labor Code § 2699.3,

2 (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of
3 Section 2699 alleging a violation of any provision listed in Section 2699.5 shall
4 commence only after the following requirements have been met:

5 (1) The aggrieved employee or representative shall give written notice by
6 certified mail to the Labor and Workforce Development Agency and the employer
7 of the specific provisions of this code alleged to have been violated, including the
8 facts and theories to support the alleged violation.

9 (2) (A) The agency shall notify the employer and the aggrieved employee
10 or representative by certified mail that it does not intend to investigate the alleged
11 violation within 30 calendar days of the postmark date of the notice received
12 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided
13 within 33 calendar days of the postmark date of the notice given pursuant to
14 paragraph 1), the aggrieved employee may commence a civil action pursuant to
15 Section 2699.

16 54. On or about April 20, 2015, Plaintiff complied with notice requirements pursuant
17 to Labor Code § 2699.3 and sent via certified mail, written notice of the specific provisions
18 alleged to have been violated pursuant to Labor Code § 2699.3 to the Labor and Workforce
19 Development Agency (“LWDA”) and the alleged employer, Defendant, Nevell Group, Inc.

20 55. Thirty three (33) days passed since Plaintiff provided written notice required by
21 Labor Code § 2699.3. Therefore, Plaintiff may commence a civil action pursuant to Labor Code
22 § 2699.3(a)(1)(2).

23 56. On information and belief and based thereon, by their policy of:

- 24 i. Failing to provide Meal Periods;
- 25 ii. Failing to Authorize and Permit Rest Periods;
- 26 iii. Failing to timely pay all wages earned and owed upon separation from
27 employment with Defendants;
- 28 iv. Failing to provide accurate wage statements; and
- v. Engaging in unfair competition;

Defendants engaged in unlawful activity prohibited by *inter alia*, Labor Code §§ 201, 202, 203,
221-226, 226.7, 512, 1198, 2802 Cal. Code of Regulations, Title 8, which violation constitutes a

1 violation of fundamental public policy.

2 57. As a result of their unlawful acts, Plaintiffs are entitled to civil penalties pursuant
3 to Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

4 58. WHEREFORE, Plaintiff and the Representative Class he seeks to represent
5 request relief as described herein and below

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

8 **Class Certification**

- 9 1. That this action be certified as a class action;
10 2. That Plaintiff be appointed as the representative of the Class;
11 3. That Plaintiff be appointed as the representative of the Subclasses; and
12 4. That counsel for Plaintiff shall be appointed as counsel for the Class and
13 Subclasses.

14 **On the First Cause of Action**

15 (Failure to Provide Meal Periods or Compensation in Lieu Thereof)

- 16 1. For one (1) hour of penalty pay for each day in which a required meal period was
17 not lawfully provided; and
18 2. For such other and further relief as the Court deems proper.

19 **On the Second Cause of Action**

20 (Failure to Provide Rest Periods or Compensation in Lieu Thereof)

- 21 1. For one (1) hour of premium pay for each day in which a required rest period was
22 not properly permitted or authorized; and
23 2. For such other and further relief as the Court deems proper.

24 **On the Third Cause of Action**

25 (Failure to Comply with Accurate Itemized Wage Statements)

- 26 1. For statutory penalties pursuant to Labor Code sections 226 and 1174; and
27 2. For such other and further relief as the Court deems proper;

1 **On the Fourth Cause of Action**

2 (Failure to Timely Pay Wages Owed at Separation)

- 3 1. For statutory penalties pursuant to Labor Code section 203;
- 4 2. For interest for wages untimely paid; and
- 5 3. For such other and further relief as the Court deems proper.

6 **On the Fifth Cause of Action**

7 (Unfair Competition)

8 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of

9 sums to Plaintiff and Class Members for their past failure to accurately pay overtime wages over

10 the last four (4) years in an amount according to proof;

11 2. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of

12 sums to Plaintiff and Class Members for the Defendants' past failure to pay premium wages for

13 meal periods and rest periods that were not provided to Plaintiff and Class Members over the last

14 four (4) years in an amount according to proof;

15 3. For pre-judgment interest on any unpaid overtime wages due from the day that

16 such amounts were due;

17 4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to

18 recover under Labor Code section 1194, and California Code of Civil Procedure section 1021.5;

19 5. For costs of suit incurred herein that Plaintiff and Class Members are entitled to

20 recover under Labor Code section 1194; and

21 6. For such other and further relief as the Court deems proper.

22 **On the Sixth Cause of Action**

23 **(PAGA)**

24 1. For statutory penalties; and

25 2. For such other and further relief as the Court deems proper.

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of the Class and Subclasses, respectfully demands a jury trial in this matter.

Respectfully submitted,

Dated: June 8, 2015

/s/ Alaine Patti-Jelsvik
JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Alaine Patti-Jelsvik, Esq.
Attorneys for PLAINTIFF, XAVIER NUNEZ, on
behalf of himself, and all others similarly situated