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OF ORIGINAL FILED
Los Angeles Superior Court

JAN 14 2016

Sherri R. Carter, Executive Officer/Clerk
By: Moses Soto, Deputy

Attorneys for Plaintiff KERRY SOTO as individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES

KERRY SOTO as an individual and on behalf
of all similarly situated employees

Plaintiff,

v.

UNITED PACIFIC WASTE dba UPW
WASTE AND RECYCLING SERVICES and
DOES 1 through 50, inclusive

Defendant.

Case No.: **BC 6 0 7 1 7 6**

Assigned for all purposes to Judge:
The Hon.
Dept:

**Class Action Complaint For Damages
Injunctive Relief and Restitution**

1. **Failure to Pay Overtime Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Keep Accurate Payroll Records;**
5. **Failure to Pay Wages Upon Ending Employment;**
6. **Unfair Competition (Business and Professions Code § 17200 et seq.);**
7. **Failure To Reimburse For Necessary Expenditures (Labor Code § 2802); and**
8. **Violation of Labor Code §§ 2698-2690 (Private Attorney General Act)**

Complaint Filed:
Trial Date: None Set

Request for Jury Trial

1 Plaintiff KERRY SOTO (hereinafter "Mr. Soto" or "Plaintiff") on behalf of himself and
2 all others similarly situated, complain and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. This is a class action brought on behalf of Plaintiff KERRY SOTO (hereinafter
6 "Mr. Soto" or "Plaintiff") and the class he seeks to represent ("Plaintiff Class"), as defined
7 herein, as all non-exempt employees employed by or formerly employed by Defendant UNITED
8 PACIFIC WASTE, (hereinafter "UPW" or "Defendant") . The non-exempt employees
9 employed by or formerly employed by UPW within the State of California are hereinafter
10 referred to as "Plaintiff Class."

11 2. Plaintiff individually and on behalf the class he seeks to represent, seek relief
12 against UPW for the failure to pay all wages due in violation of *Labor Code* §§ 510 and 1194,
13 including both regular and overtime wages; the failure to provide meal and rest periods or
14 compensation in lieu thereof pursuant to *Labor Code* §§ 226.7, 512, the applicable IWC Wage
15 Orders, and *Cal. Code Regs.*, Title 8, § 11000 et seq.; the failure to pay wages of terminated or
16 resigned employees pursuant to *Labor Code* §§ 201-203; and the failure to provide accurate
17 itemized wage statements upon payment of wages pursuant to *Labor Code* § 226(a), 1174, 1175,
18 Plaintiff further seeks equitable remedies in the form of declaratory relief and injunctive relief,
19 and relief under the *Bus. & Prof. Code* §§ 17200 et seq. for unfair business practices.

20 3. The "Class Period" is defined as the four (4) years prior to the filing of the
21 Complaint through the date final judgment is entered. Plaintiff reserves the right to amend this
22 Complaint to reflect a different "Class Period" as further discovery is conducted.

23 4. At all relevant times herein, UPW and each Defendant, have consistently
24 maintained and enforced against Plaintiff Class the following unlawful practices and policies: a)
25 willfully refusing to pay Plaintiff and Plaintiff Class for all hours worked, including both regular
26 and overtime; b) willfully refusing to permit Plaintiff and Plaintiff Class from taking meal and/or
27 rest periods or compensation in lieu thereof; c) willfully refusing to compensate Plaintiff and
28 certain members of the Plaintiff Class wages due and owing at the time Plaintiff's and Plaintiff

1 Class' employment with Defendants ended; d) willfully refusing to furnish to Plaintiff and
2 Plaintiff Class accurate itemized wage statements upon payment of wages.

3 **II.**

4 **JURISDICTION AND VENUE**

5 5. Venue is proper in this Judicial district and the County of Los Angeles, because
6 the Defendant maintain its location and transacts business in this county, the obligations and
7 liability arise in this county, and work was performed by Plaintiff and members of the proposed
8 class made the subject of this action in the County of Los Angeles, California.

9 6. The California Superior Court has jurisdiction in the matter because the individual
10 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
11 Federal Court and, upon information and belief, Plaintiff and Defendant are residents of and/or
12 domiciled in the State of California. Further, there is no federal question at issue as the issues
13 herein is based solely on California Statutes and law including the California Labor Code,
14 Industrial Welfare Commission Wage Orders, *Code of Civil Procedure*, *Rule of Court*, and
15 *Business and Professions Code*.

16 **III.**

17 **THE PARTIES**

18 **A. The Plaintiff**

19 7. Plaintiff at various relevant times herein, was an employee of the Defendant and
20 entitled to compensation for all hours worked, overtime compensation, and penalties from
21 Defendant. Plaintiff was employed by the Defendant for at least four (4) years prior to the
22 commencement of this action, in the County of Los Angeles at various times herein relevant.
23 Plaintiff was employed by the Defendant during the Class Period in a non-exempt hourly
24 position. Each of the Plaintiff Class members are identifiable, current and/or formerly similarly
25 situated persons who were employed in non-exempt hourly positions in California for the
26 Defendant during the Class Period.

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1 **B. The Defendant**

2 8. Plaintiff is informed and believes, and based thereon alleges that, "UPW" is a
3 corporation, and is and/or was the employer of the Plaintiff and Plaintiff Class during the Class
4 Period. During the liability period, Defendant employed Plaintiff and similarly situated persons
5 and failed to pay Plaintiff and Plaintiff Class for all hours worked including overtime premium
6 for overtime hours worked, failed to provide meal periods or pay a meal period penalty in lieu of,
7 failed to provide rest periods or pay a rest period penalty in lieu of, and failed to pay due and
8 owing wages upon ending of employment for employees within California. On information and
9 belief, and based thereon alleges that Defendant is conducting business in good standing in
10 California.

11 9. Plaintiff is ignorant of the true names, capacities, relationships and extent of
12 participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50,
13 inclusive, but on information and belief allege that said Defendant is legally responsible for the
14 payment of overtime compensation, rest and meal period compensation and/or *Labor Code* § 203
15 penalties to the Plaintiff Class members by virtue of their unlawful practices, and therefore sue
16 these Defendant by such fictitious names. Plaintiff will amend this complaint to allege the true
17 names and capacities of the DOE Defendant when ascertained.

18 10. Plaintiff is informed and believe, and based thereon alleges, that each
19 Defendant acted in all respects pertinent to this action as the agent of the other Defendant,
20 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
21 each Defendant legally attributable to the other Defendant.

22 **IV.**

23 **GENERAL ALLEGATIONS**

24 11. California *Labor Code* § 1194 provides that notwithstanding any agreement to
25 work for a lesser wage, an employee receiving less than the legal overtime compensation is
26 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
27 interest thereon, reasonable attorneys' fees, and costs of suit.

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1 12. Further, *Business and Professions Code* § 17203 provides that any person who
2 engages in unfair competition may be enjoined in any court of competent jurisdiction. *Business*
3 *and Professions Code* § 17204 provides that any person who has suffered actual injury and has
4 lost money or property as a result of the unfair competition may bring an action in a court of
5 competent jurisdiction.

6 13. During all, or a portion of the Class Period, Plaintiff and each member of the
7 Plaintiff Class was employed by Defendant and each of them, in the State of California.

8 Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under
9 one or more Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or
10 other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not
11 subject to an exemption for executive, administrative and professional employees, which
12 imposed obligations on the part of the Defendant to pay Plaintiff and Plaintiff Class members
13 lawful overtime compensation. Plaintiff and Plaintiff Class were covered by one or more
14 Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 226.7 and other
15 applicable wage orders, regulations and statutes which imposed an obligation on the part of the
16 Defendants to pay Plaintiff and Plaintiff Class rest and meal period compensation.

17 14. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff
18 Class members for all hours worked.

19 15. During the Class Period, Defendant was obligated to pay Plaintiff and
20 Plaintiff Class members overtime compensation for all hours worked over eight (8) hours of
21 work in one (1) day or forty (40) hours in one (1) week, and double-time for hours worked in
22 excess of twelve (12) in one day.

23 16. During the Class Period, Defendant was obligated to provide Plaintiff and
24 Plaintiff Class with a work free meal and/or rest period(s)

25 17. Plaintiff and each Class member primarily performed non-exempt work in excess
26 of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or
27 statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime
28 compensation at time and a half rate, and when applicable, double time rates as set forth by the

1 applicable Wage Orders, regulations and/or statutes.

2 18. Class members who ended their employment during the Class Period, but were
3 not paid the above due compensation for all hours worked, overtime compensation timely upon
4 the termination of their employment as required by *Labor Code* §§ 201-203, and is entitled to
5 penalties as provided by *Labor Code* § 203.

6 19. During the Class Period, the Defendant and each of them, required the
7 Plaintiff and Class members to work off the clock as well as overtime without lawful
8 compensation, in violation of the various applicable Wage Orders, regulations and statutes, and
9 the Defendant: (1) Willfully failed and refused, and continue to fail and refuse to pay
10 compensation for all hours worked, lawful overtime compensation to the Plaintiff Class
11 members; and (2) willfully failed and refused, and continue to fail and refuse to pay due and
12 owing wages promptly upon termination of employment to Plaintiff and certain Plaintiff Class
13 members.

14 20. During the Class Period, Defendants, and each of them failed and/or refused to
15 schedule Plaintiff and Plaintiff Class in an overlapping manner so as to reasonably provide meal
16 and/or rest breaks and/or shift relief for Plaintiff and Plaintiff Class, thereby causing members of
17 the Plaintiff Class to work without being given paid ten (10) minute rest periods for every four
18 (4) hours or major fraction thereof worked and without being given a thirty (30) minute meal
19 period for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of
20 at least ten (10) hours during which Plaintiff Class were relieved of all duties and free to leave
21 the premises. Defendants further failed and/or refused to schedule Plaintiff and Plaintiff Class in
22 an overlapping manner so as to reasonably ensure meal and/or rest breaks were taken within the
23 required statutory time frame as required by law. Furthermore, Defendants failed and/or refused
24 to pay any Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as premium
25 compensation for failure to provide rest and/or meal periods or to providing such rest and/or
26 meal periods within the statutory time frame as a result of their scheduling policy.

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V.

CLASS ALLEGATIONS

21. Plaintiff brings this action on behalf of himself and all other similarly situated persons, as a class action pursuant to California Civil Code of Procedure §382 on behalf of themselves and all other similarly situated persons in the Class, which is composed of and defined as follows: All persons who are employed or have been employed by Defendants in the State of California who, within the four years of the filing of this Complaint, have worked as non-exempt employees and were not paid all lawful wages as regular time, overtime, and double-regular time.

- a. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees and have not been provided a meal period for every five hours or major fraction thereof worked per day, and were not provided one hour's pay for each day on which such meal period was not provided;
- b. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees and have not been provided a rest period for every four hours or major fraction thereof worked per day, and were not provided compensation of one hour's pay for each day on which such rest period was not provided;
- c. All persons who were employed by Defendants in the State of California who, for the three years prior to the filing of this class action to the present have worked as non-exempt employees and have been terminated or resigned, and have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties for unpaid wages;
- d. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees and were not paid all wages owed, including but not limited to overtime;
- e. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees and were not provided an accurate payroll record as required under Labor Code 226 and Labor Code Section §1174.
- f. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees who have been subjected to unlawful and unfair business practices within the meaning of

Unfair Competition Law and who suffered injury, including lost money, as a result of Defendants' unlawful and unfair business practices.

- g. All persons who are employed or have been employed by Defendants in the State of California who, for the four years prior to the filing of this class action to the present have worked as non-exempt employees and who are entitled to recover from Defendants unpaid wages, overtime compensation, rest and meal period compensation and penalties, waiting period wages and penalties, attorneys' fees and costs under Labor Code §§ 2698-2690.

22. Plaintiff reserves the right under Rule 1855(b), *California Rules of Court*, to amend or modify the Class description with greater specificity or further division into subclasses or limitation to particular issues.

23. This action has been brought and may be maintained as a class action pursuant to *Code of Civil Procedure* § 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

24. This Court should permit this action to be maintained as a class action pursuant to *Code of Civil Procedure* § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The Class is so numerous that it is impractical to bring all member of the Class before the Court;
- (d) Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) Plaintiff and the other members of the Class will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (f) There is a community of interest in obtaining appropriate legal and equitable relief for the common law and statutory violations and other improprieties and in obtaining adequate compensation for the damages and injuries which Defendant's

actions have inflicted upon the Class;

(g) There is a community of interest in ensuring that the combined assets and available insurance of the Defendant is sufficient to adequately compensate members of the Class for the injuries sustained;

(h) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:

(1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standard of conduct for the Defendant; and/or

(2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who is, or may be, responsible Defendant; and

(i) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

VI.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Plaintiff and Plaintiff Class Member against all Defendants)

25. Plaintiff and Plaintiff Class incorporates paragraphs 1 through 24 of this Complaint as if fully alleged herein.

26. Plaintiff and Plaintiff Class members regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class members overtime premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to schedule Plaintiff and

1 Plaintiff Class members in such a manner that allowed Plaintiff and Plaintiff Class members to
2 be relieved of their shift immediately, thereby causing Plaintiff and Plaintiff Class members to
3 work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiff and
4 Plaintiff Class seek overtime in an amount according to proof. Pursuant to *Labor Code* § 1194,
5 the Class members seek the payment of all overtime compensation which they earned and
6 accrued four (4) years prior to filing this complaint, according to proof.

7 27. Defendant has willfully violated the Labor Code by failing to pay Plaintiff and
8 Plaintiff Class all wages. Plaintiff and Plaintiff Class were denied wages as a result of
9 Defendants' policy of having Plaintiff and Plaintiff Class work through meal and/or rest periods
10 and having Plaintiff and Plaintiff Class work "off the clock." Further, Defendant has regularly
11 violated the Labor Code with respect to meeting the requirements of paying wages earned,
12 including, overtime, double-time and remuneration when calculating the employees regular rate
13 of pay, as herein before alleged. Defendants have intentionally excluded remuneration that must
14 be included in all employees' regular rate of pay in order to avoid payment of overtime wages
15 and other benefits in violation of the Labor Code and the order issued by the IWC.

16 28. Additionally, Plaintiff and Plaintiff Class members is entitled to attorneys fees,
17 costs, pursuant to California *Labor Code* § 1194 and prejudgment interest.

18 VII.

19 SECOND CAUSE OF ACTION

20 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

21 **(Plaintiff and Plaintiff Class Member against all Defendants)**

22 29. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
23 set forth herein, paragraphs 1 through 28 as if fully alleged herein.

24 30. *Labor Code* §§ 226.7 and 512, provides that no employer shall employ any
25 person for a work period of more than five (5) hours without providing a meal period of not less
26 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
27 without a second (2nd) meal period of not less than thirty (30) minutes.

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1 31. Labor Code § 226.7 provides that if an employer fails to provide an employee a
2 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
3 pay at the employee's regular rate of compensation for each workday that the meal period is not
4 provided in accordance with this section.

5 32. Defendant, and each of them, failed to schedule non-exempt employees in an
6 adequately overlapping manner so as to reasonably ensure Plaintiff and Plaintiff Class could take
7 and/or receive such meal periods within the statutory timeframe. As a result, Plaintiff and
8 Plaintiff Class were often forced to forego meal periods and/or work during their meal periods.
9 In so doing, Defendant has intentionally and improperly denied meal periods to Plaintiff and
10 Plaintiff Class in violation of *Labor Code* §§ 226.7 and 512 and other regulations and statutes.

11 33. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than
12 five (5) hours in a workday.

13 34. At varying times relevant hereto, Plaintiff and Plaintiff Class at times have
14 worked more than ten (10) hours in a workday.

15 35. At all times relevant hereto, the Defendant, and each of them, due to their failure
16 to schedule non-exempt positions in a manner so as to reasonably provide meal and/or work free
17 meal period as required by *Labor Code* §§ 226.7 and 512.

18 36. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in
19 such a way as to provide meal periods, and/or work free meal periods to Plaintiff and Plaintiff
20 Class thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages
21 in the amounts which are presently unknown, but which exceed the jurisdictional limits of this
22 Court and which will be ascertained according to proof at trial.

23 37. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of
24 meal period compensation pursuant to *Labor Code* § 226.7 which they are owed beginning four
25 (4) years prior to filing this Complaint as well as the assessment of any statutory penalties
26 against these Defendant, and each of them, in a sum as provided by the Labor Code and/or other
27 statutes.

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VIII.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIOD OR COMPENSATION IN LIEU THEREOF

(Plaintiff and Plaintiff Class against all Defendants)

38. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 37 as if fully alleged herein.

39. *Labor Code* § 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

40. *Labor Code* § 226.7(b) provides that if an employer fails to provide an employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

41. Defendant, and each of them, failed and or refused to implement a relief system by which Plaintiff and Plaintiff Class could receive rest periods and/or work free rest periods. Furthermore, due to Defendant's relief system, Plaintiff and Plaintiff Class did not receive their rest periods within the required statutory time frame. By and through their actions, Defendant intentionally and improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of *Labor Code* §§ 226.7 and 512.

42. At all times relevant hereto, Plaintiff and Plaintiff Class, have worked more than four (4) hours in a workday.

43. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiff and Plaintiff Class have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

44. Plaintiff, himself and on behalf of employees similarly situated, request recovery of rest period compensation pursuant to *Labor Code* § 226.7, which they are owed beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory penalties

1 against Defendant, and each of them, in a sum as provided by the Labor Code and/or any other
2 statute.

3 **IX.**

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**

6 **(Plaintiff and Plaintiff Class against all Defendants)**

7 45. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though
8 fully set forth herein, paragraphs 1 through 44 as if fully alleged herein.

9 46. *Labor Code* §1174 (d), requires an employer to keep at a central location in
10 California or at the plant or establishment at which the employees are employed, payroll records
11 showing the hours worked daily, and the wages paid to, each employee. Plaintiff is informed,
12 and believes that Defendant willfully failed to make or keep accurate records for Plaintiff and
13 Plaintiff Class.

14 47. Labor Code §226(a) states that, “every employer shall, semimonthly or at the time
15 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
16 check, draft, or voucher paying the employee’s wages, or separately when wages are paid by
17 personal check or cash,, an accurate itemized statement in writing showing (1) gross wages
18 earned, (2) total hours worked by the employee..., (4) all deductions..., (5) net wages, (6) the
19 inclusive dates of the period for which the employee is paid, (7) the name of the employee and
20 only the last four digits of his or her social security number or an employee identification number
21 other than a social security number, (8) the name and address of the legal entity that is the
22 employer..., and (9) all applicable hourly rates in effect during the pay period and corresponding
23 number of hours worked at each hourly rate by the employee...”

24 48. Labor Code section 226(e) provides that if an employer knowingly and
25 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the
26 total hours worked by the employee and the applicable hourly overtime rates, causing the
27 employee injury, then the employee is entitled to recover the greater of all actual damages or
28 fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent

1 violation, up to four thousand dollars (\$4000). Plaintiff is informed and believes that Defendants
2 willfully failed to make or keep accurate records for Plaintiff and Plaintiff Class.

3 49. IWC Wage Order No.1-2001, paragraph 7(a) requires that every employer shall
4 keep accurate information with respect to each employee, including time records showing when
5 each employee begins and ends each work periods, the total daily hours worked by each
6 employee and the total hours worked in each payroll period, and applicable rates of pay.
7 Plaintiff is informed, and believes that Defendant willfully and intentionally failed to make
8 and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff Class.
9 Specifically, Plaintiff believes that Defendant's records do not accurately reflect where Plaintiff
10 and Plaintiff Class worked during their meal and/or rest breaks due to Defendant's failure to
11 schedule Plaintiff and Plaintiff Class in an overlapping manner so as to provide them with a meal
12 and/or rest period.

13 50. Plaintiff is informed, and believes that Defendant's failure to keep accurate
14 payroll records, as described above, violated *Labor Code* § 1174(d) and the applicable wage
15 order. Plaintiff and the Plaintiff Class are entitled to penalties of \$100.00 and for the initial
16 violation and \$200.00 for each subsequent violation for every pay period during which these
17 records and information was not kept by Defendants.

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

24 52. Plaintiff is informed and believe that Defendant's failure to keep and maintain
25 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff
26 Class are entitled to a statutory penalty of \$500.00 for Plaintiff and each member of Plaintiff
27 Class pursuant to Labor Code § 1174.5.

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1 X.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

4 **(Plaintiff and Plaintiff Class against all Defendants)**

5 53. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
6 set forth herein, paragraphs 1 through 52 as if fully alleged herein.

7 54. Plaintiff and certain members of the Plaintiff Class who ended their employment
8 with Defendants during the Class Period, were entitled to be promptly paid lawful overtime
9 compensation and other premiums, as required by *Labor Code* §§ 201-203. Defendants refused
10 and/or failed to promptly compensate Plaintiff and Plaintiff Class wages owed as a result of their
11 failure to provide meal and/or rest periods as well as pay overtime compensation. Pursuant to
12 *Labor Code* § 203, such Plaintiff and Plaintiff Class seek the payment of penalties pursuant to
13 *Labor Code* § 203, according to proof.

14 XI.

15 **SIXTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION LAW**

17 **(Plaintiff and Plaintiff Class against all Defendants)**

18 55. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though
19 fully set forth herein, paragraphs 1 through 54 of this Complaint.

20 56. *California Business and Professions Code* § 17200 et. seq. (also referred to
21 herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair
22 competition in the form of any unlawful, unfair or fraudulent business act or practice.

23 57. *California Business and Professions Code* § 17204 allows "any person who has
24 suffered injury in fact and has lost money or property as a result of such unfair competition" to
25 prosecute a civil action for violation of the Unfair Competition Law ("UCL").

26 58. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously
27 enforce minimum labor standards in order to ensure employees are not required to work under
28 substandard and unlawful conditions, and to protect employers who comply with the law from

1 those who attempt to gain competitive advantage at the expense of their workers by failing to
2 comply with minimum labor standards.

3 59. Beginning at an exact date unknown to Plaintiff, but at least four years prior to
4 the filing of this lawsuit, Defendant has committed acts of unfair competition as defined by the
5 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
6 practices and acts described in this Complaint including but not limited to violations of *Labor*
7 *Code* §§ 204, 1197, 1198 of the 226.7 and 512 as well as other statutes.

8 60. The violations of these laws and regulations, as well as of the fundamental
9 California public policies protecting workers, serve as unlawful predicate acts and practices for
10 purposes of *Business and Professions Code* § 17200 et. seq.

11 61. The acts and practices described above constitute unfair, unlawful and fraudulent
12 Business Practices, and unfair competition, within the meaning of *Business and Professions*
13 *Code* § 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
14 similarly situated employees to labor for many hours without receiving the meal and rest periods
15 and overtime compensation, to which they are entitled by law, while enabling Defendant to gain
16 an unfair competitive advantage over law-abiding employers and competitors.

17 62. As a result of Defendant's acts, Plaintiff and Plaintiff Class have suffered injury
18 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
19 hours of labor. As a result of Defendant's unlawful acts of unfair competition, Plaintiff and
20 Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be
21 proven at trial.

22 63. As a direct and proximate result of the aforementioned acts and practices,
23 Plaintiff and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

24 64. *Business and Professions Code* § 17203 provides that a court may make such
25 orders or judgments as may be necessary to prevent the use or employment by any person of any
26 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
27 prevent Defendant from repeating their unlawful, unfair and fraudulent business acts and
28 business practices alleged above.

65. *Business and Professions Code* § 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business and Professions Code* § 17203 for all wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods taken away from them, during the four-year period prior to the filing of this Complaint.

66. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369 of the *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the *Labor Code* pursuant to *Business and Professions Code* § 17202.

67. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard Plaintiff sues on behalf of the general public, as well as himself and other similarly situated employees. Plaintiff and Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

68. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to *Code of Civil Procedure* § 1021.5 and otherwise.

XII.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES (LABOR CODE
SECTIONS 2802)
(Plaintiff and Plaintiff Class against All Defendants)

69. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein, paragraphs 1 through 67 of this Complaint.

70. Cal. Labor Code §2802, states "An employer shall indemnify his or her employee

1 for all necessary expenditures or losses incurred by the employee in direct consequence of the
2 discharge of his or her duties...."

3 71. Plaintiff and the Plaintiff Class were not reimbursed by Defendant for necessary
4 expenditures as a direct consequence of the discharge of their duties.

5 72. Defendant knowingly, willingly and intentionally attempted to offset the cost of
6 doing business on the Plaintiff and Plaintiff Class.

7 73. Defendant had a corporate practice and policy of requiring Plaintiff and Plaintiff
8 Class to shoulder the burden of Defendant's cost of doing business by failing to reimburse
9 Plaintiff and Plaintiff Class for necessary expenditures.

10 74. Accordingly, Plaintiff and Plaintiff Class is entitled to an award of "necessary
11 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
12 fees and interest.

13 **XIII.**

14 **EIGHTH CAUSE OF ACTION**

15 **VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY'S**

16 **GENERAL ACT - LABOR CODE § 2698-2699**

17 **(Plaintiff and Plaintiff Class against all Defendants)**

18 75. Plaintiff and Plaintiff Class re-allege and incorporate by reference, as though fully
19 set forth herein, paragraphs 1 through 74 of this complaint.

20 76. *Cal. Labor Code* §§ 2698-2699 - The Labor Code Private Attorney's General Act
21 of 2004 provides for a civil penalty to be assessed and collected by the Labor and Workforce
22 Development Agency, or any of its departments, divisions, commissions, boards agencies or
23 employees for a violation of the *Cal. Labor Code*, may be recovered through a civil action by an
24 aggrieved employee on behalf of himself or herself, and collectively on behalf of all other
25 current or former employees.

26 77. Whenever the Labor and Workforce Development Agency, or any of its
27 departments, divisions, commissions, boards agencies or employees has discretion to assess a
28 civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the

1 same limitations and conditions to assess a civil penalty.

2 78. Plaintiff and Plaintiff Class are "aggrieved employees" as defined by Labor Code
3 § 2699 in that they are all current or former employees of Defendant, and one or more of the
4 alleged violations was committed against them.

5 79. Prior to filing this Complaint, Plaintiff gave written notice on December 21, 2015,
6 by certified mail to the Labor and Workforce Development Agency ("LWDA") and to UPW, of
7 the specific provisions alleged to have been violated, including the facts and theories to support
8 the alleged violations as required by *Labor Code* § 2699.3. (See Exhibit "A").

9 80. Plaintiff asserts all of the claims in this Complaint against Defendant, individually
10 and on behalf of all aggrieved employees of the Plaintiff Class, in his capacity as private attorney
11 general, and seek all statutory penalties available under the *Labor Code*.

12 81. Pursuant to *Labor Code* § 2699 Plaintiff, individually and on behalf of all
13 aggrieved employees, request and are entitled to recover from Defendant; unpaid wages,
14 overtime compensation, rest and meal period compensation and penalties, waiting period wages
15 and penalties according to proof, penalties for failure to keep accurate payroll records, interest,
16 attorney's fees and costs pursuant to *Labor Code* §§ 218.5 and 1194(a), and 1174, as well as all
17 statutory penalties, and attorneys' fees against Defendant and each of them, including but not
18 limited to:

- 19 (a.) Penalties under *Labor Code* § 2699 in the amount of \$100 for each
20 aggrieved employee per pay period for each initial violation, and \$200 for
21 each aggrieved employee per pay period for each subsequent violation;
22 (b.) Penalties under *Code of Regulations* Title 8 § 11070 in the amount of \$50
23 for each aggrieved employee per pay period for the initial violation, and
24 \$200 for each aggrieved employee per pay period for each subsequent
25 violation;
26 (c.) Any and all additional penalties and sums as provided by the *Labor Code*
27 and/or other statutes.

28 82. In addition thereto, Plaintiff seeks and are entitled to 50% of all penalties obtained

1 under *Labor Code* § 2699 to be allocated to the General Fund, and 25% of all penalties obtained
2 to be allocated to the Labor and Workforce Development Agency, for education of employers
3 and employees about their rights and responsibilities under the *Labor Code* and 25% to all
4 aggrieved employees.

5 83. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
6 costs pursuant to *Labor Code* §§ 2699, 218.5, 226, 1174, and 1194, and any other applicable
7 statute.

8 XIV.

9 PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 11 1. For nominal damages;
- 12 2. For compensatory damages;
- 13 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits
14 from the unlawful business practices of Defendant;
- 15 4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated
16 or resigned employees;
- 17 5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 226.7, 512 and 1194, and as
18 provided for by *Labor Code* § 2699;
- 19 6. For interest accrued to date;
- 20 7. Injunctive relief, enjoining Defendants from engaging in the unlawful and unfair
21 business practices complained herein;
- 22 8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair
23 business practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and
24 declaring Defendant has unlawfully treated Plaintiff and Plaintiff Class, failed to pay
25 all wages and overtime compensation in violation of California law, failed to pay
26 wages to former employees Plaintiff and other certain members of Plaintiff Class,
27 failed to provide Plaintiff and Plaintiff Class accurate itemized wage statements upon
28 payment of wages, and declaring the amounts of damages, penalties, equitable relief,

costs, and attorney's fees Plaintiff and Plaintiff Class are entitled to.

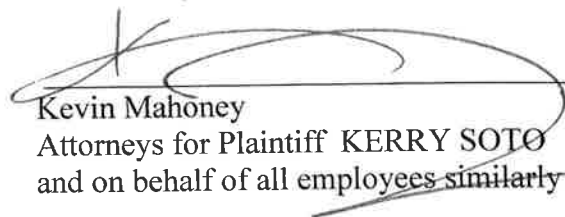
9. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and 1194;

10. For reasonable attorneys' fees pursuant to *Labor Code* §§ 226 and 1194 and;

11. For all such other and further relief as the Court may deem just and proper.

Dated: January 11, 2016

MAHONEY LAW GROUP, APC



Kevin Mahoney
Attorneys for Plaintiff KERRY SOTO
and on behalf of all employees similarly situated

EXHIBIT A



Katherine J. Odenbreit
kodenbreit@mahoney-law.net
(562) 590-5550

December 21, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LABOR AND WORKFORCE
DEVELOPMENT AGENCY
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

United Pacific Waste dba UPW Waste and
Recycling Services
c/o Shana Kandilian Miclea
(Agent for Service of Process)
10330 Pioneer Blvd., Suite 290
Santa Fe Springs, CA 90670

**Re: Kerry Soto, et al. v. United Pacific Waste dba UPW Waste and Recycling
Services**

Dear LWDA Representative:

Pursuant to Labor Code §2699.3, we write to inform you of our intent to file allegations against United Pacific Waste ("UPW" or "Defendant"), on behalf Kerry Soto ("Plaintiff") under Labor Code §2699.

This office represents Kerry Soto and all other similarly situated employees who worked as drivers for UPW in California, for, among other things, multiple violations of the California Labor Code, including but not limited to Labor Code §§ 510 & 1194 (by failing to pay all regular, overtime and minimum wages owed), Labor Code §§ 226.7 & 512 (by failing to provide mandated meal and rest periods), Labor Code §§201-203 (waiting time penalties), Labor Code §226 (by failing to provide itemized wage statements), and for violation of the Business & Professions Code §§ 17200 *et seq.*, which UPW committed against Plaintiff.

The facts and theories supporting these claims are as follow: During his employment with UPW, Plaintiff and other similarly situated employees were required to perform work for which UPW would not permit them to record on their time records and for which they were not paid overtime and/or minimum wage. UPW expected its truck driver employees to clock out at the end of day upon arrival back to the UPW yard. However, employees were required to spend at least 30 minutes after clocking out inspecting their trucks and filling out required paperwork.

Plaintiff and other similarly situated employees were frequently prevented by the employer from taking full, uninterrupted 30 minute meal breaks. However, the employer had a policy and practice whereby it would automatically deduct 30 minutes from Plaintiff's time record each work day whether or not Plaintiff actually took a meal break. There were also times

where Plaintiff worked in excess of 10 hours and UPW deducted 30 minutes for a second meal period even though one was not provided. Plaintiff was frequently unable to take full, uninterrupted 10 minute rest breaks in that he was required to continuously drive to various locations at the direction of the employer.

As a result of Defendant's violations of the above-referenced Labor Code sections, as well as other California laws, UPW owes Plaintiff and other employees similarly situated wages due including overtime and minimum wages for hours worked in excess of 8 hours in a work day and 40 hours in a work week, for time worked during meal breaks, and further owes an additional hour of pay for all missed mandated meal and rest periods. Further, because Plaintiff was not paid all wages due during his employment with Defendant, he is entitled to waiting time pay under Labor Code section 203.

As a further result of the above failures by UPW to pay all wages due to Plaintiff and other employees similarly situated and the automatic deduction for meal periods, itemized wage statements issued by UPW to Plaintiff failed to reflect all hours worked, rates of pay for all hours worked, and all wages due, in violation of Labor Code § 226(a).

Therefore, Defendant is liable for damages, applicable premiums and penalties, interest, attorney's fees and costs in accordance with California law.

Please notify me within 30 calendar days of the date this letter is postmarked whether or not you intend to investigate the above violations at your earliest convenience. We understand if we do not receive a response from you within thirty-three (33) calendar days of the postmark date of this notice that the LWDA intends to investigate these allegations, that the aggrieved employee may immediately thereafter amend the operative complaint against the employer and add an action under Labor Code §2699.

Very truly yours,

MAHONEY LAW GROUP

A handwritten signature in dark ink, appearing to read "Katherine J. Odenbreit", written over a horizontal line.

KATHERINE J. ODENBREIT, ESQ.