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Superior Court of California,
County of Orange

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

HILARIO PASPE CRUZ, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

FIRST AMERICAN DATA TREE, LLC,
FIRST AMERICAN FINANCIAL
CORPORATION; and DOES 1-20,
inclusive,

Defendants.

Case No. 30-2015-00822510-CU-OE-CXC

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

1. Failure to Pay Overtime Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Pay Wages Upon Separation of
Employment and Within the Required Time;
5. Failure to Furnish Accurate Wage
Statements;
6. Violation of California Business and
Professions Code §§ 17200, *et seq.*; and
7. Enforcement of Labor Code § 2698 *et*
seq. ("PAGA")

1 Plaintiff Hilario Paspe Cruz, individually and on behalf of all others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Hilario Paspe Cruz ("Plaintiff") brings this putative class action and
5 representative action against First American Data Tree, LLC, First American Financial
6 Corporation, and Does 1 through 20, inclusive (collectively "Defendants" or "First American"), on
7 behalf of himself individually and on behalf of a class of Defendants' employees in computer
8 software field positions classified as exempt from overtime pay and other benefits of the California
9 labor laws. Defendants classified these employees as exempt even though their skills, job duties
10 and/or rate of pay did not meet the test for exempt classification pursuant to Labor Code section
11 515.5, California IWC Wage Order 4, and other applicable California law. These employees were
12 entitled to overtime and other protections of California wage and hour law as non-exempt
13 employees. It is Defendants' burden of pleading, evidence, and proof to show that these employees
14 were exempt under California wage and hour laws.

15 2. Through this action, Plaintiff is alleging that Defendants have engaged in a
16 systematic pattern of wage and hour violations under the California Labor Code ("Labor Code"), all
17 of which contribute to Defendants' deliberate unfair competition.

18 3. Plaintiff is informed and believes, and thereon alleges, during the relevant time
19 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
20 things:

- 21 (a) misclassifying Plaintiff and other employees as exempt employees;
- 22 (b) failing to pay overtime compensation for work performed in excess of 8 hours
23 per day, 12 hours per day, and/or 40 hours per week;
- 24 (c) failing to provide meal periods or compensation in lieu thereof,
- 25 (d) failing to authorize or permit rest breaks or provide compensation in lieu
26 thereof;
- 27 (e) failing to provide accurate semi-monthly itemized wage statements; and
- 28 (f) failing to pay all wages due upon separation of employment.

1 4. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
2 himself and all others similarly to recover, among other things, unpaid wages and benefits, interest,
3 attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201, 202, 203, 204,
4 210, 226, 226.3, 226.7, 510, 512, 515.5, 558, 1174, 1194, 1198, and 2698 *et seq.*

5 5. Plaintiff, on behalf of himself and all class members, pursuant to Business and
6 Professions Code §§ 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair,
7 unlawful, or fraudulent practices alleged in this Complaint

8 **JURISDICTION AND VENUE**

9 6. The monetary damages and restitution sought by Plaintiff exceeds the minimal
10 jurisdictional limits of the Superior Court and will be established according to proof at trial

11 7. This Court has jurisdiction over this action pursuant to the California Constitution,
12 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those
13 given by statutes to other courts. The statutes under which this action is brought do not specify any
14 other basis for jurisdiction.

15 8. This Court has jurisdiction over all Defendants because, upon information and
16 belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail
17 themselves of the California market so as to render the exercise of jurisdiction over them by the
18 California courts consistent with traditional notions of fair play and substantial justice.

19 9. Venue is proper in this Court because, upon information and belief, Defendants
20 transact business or have at least one facility in this county and acts and omissions alleged herein
21 took place in this county.

22 **THE PARTIES**

23 10. Plaintiff Hilario Paspe Cruz is a resident of California. Plaintiff was employed by
24 First American and classified as an exempt employee during the Class Periods (as defined below)
25 in California.

26 11. First American was and is, upon information and belief, a corporation doing
27 business throughout the State of California, and at all times hereinafter mentioned, an employer as
28 defined in and subject to the California Labor Code and Industrial Welfare Commission ("IWC")

1 Wage Orders, whose employees are and were engaged throughout this county and the State of
2 California.

3 12. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of the Defendants sued herein as Does 1 to 20, inclusive, are currently unknown to
5 Plaintiff, who therefore sues said Defendants by such fictitious names under California Code of
6 Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of
7 the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful
8 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
9 names and capacities of the Defendants designated hereinafter as DOES when such identities
10 become known.

11 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employers and/or joint employers of Plaintiff and the class members.

16 **CLASS ACTION ALLEGATIONS**

17 14. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
18 and all other members of the general public similarly situated who were affected by Defendants'
19 Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

20 15. All claims alleged herein arise under California law for which Plaintiff seeks relief
21 authorized by California law.

22 16. Plaintiff's proposed Class consists of and is defined as follows:

23 All persons currently or formerly employed by Defendants in the computer
24 software field in the State of California who Defendants classified as
25 exempt employees at any time within four years prior to the filing of this
action to the present.

26 17. Plaintiff also seeks to certify the following Waiting Time Subclass:

27 All members of the Class who separated their employment from
28 Defendants within three years prior to the filing of this action to the
present.

1 18. Members of the Class and Subclass described above will collectively be referred to
2 as "class members." Plaintiff reserves the right to establish other or additional subclasses, or
3 modify any Class or Subclass definition, as appropriate based on investigation, discovery and
4 specific theories of liability.

5 19. This action has been brought and may properly be maintained as a class action under
6 the California Code of Civil Procedure § 382 because there are common questions of law and fact
7 as to the Class that predominate over questions affecting only individual members including, but
8 not limited to:

- 9 a. Whether Defendants misclassified Plaintiff and class members as exempt employees
10 rather than non-exempt employees;
- 11 b. Whether Defendants expected Plaintiff and class members to primarily perform
12 exempt job duties;
- 13 c. Whether Defendants failed to pay Plaintiff and class members at or above the
14 minimum rate required to properly classify those employees as exempt;
- 15 d. Whether Defendants expected Plaintiff and class members to possess the skills and
16 experience necessary to properly classify them as exempt;
- 17 e. Whether Defendants required Plaintiff and class members to work over 8 hours per
18 day, over 12 hours per day and/or over 40 hours per week and failed to pay them
19 overtime compensation at the proper rate;
- 20 f. Whether Defendants deprived Plaintiff and class members of timely meal periods or
21 required Plaintiff and class members to work through meal periods without
22 compensation;
- 23 g. Whether Defendants deprived Plaintiff and class members of rest breaks or required
24 Plaintiff and class members to work through rest breaks without compensation;
- 25 h. Whether Defendants failed to timely pay Plaintiff and class members all earned
26 wages during their employment;
- 27 i. Whether Defendants failed to timely pay Plaintiff and Waiting Time Subclass
28 members all wages due upon termination or within 72 hours of resignation;

1 j. Whether Defendants failed to furnish Plaintiff and class members with accurate
2 wage statements; and

3 k. Whether Defendants engaged in unfair business practices in violation of Business &
4 Professions Code §§ 17200, *et seq.*

5 20. There is a well-defined community of interest in the litigation and the Class is
6 readily ascertainable.

7 (a) Numerosity: The members of the Class are so numerous that joinder of all
8 members is impractical. Although the members of the Class are unknown to
9 Plaintiff at this time, on information and belief, the Class is estimated to be
10 greater than 100 individuals. The identity of the class members are readily
11 ascertainable by inspection of Defendants' employment and payroll records.

12 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims
13 (or defenses, if any) of the Class because Defendants' failure to comply with the
14 provisions of California wage and hour laws entitled each class member to
15 similar pay, benefits and other relief. The injuries sustained by Plaintiff are also
16 typical of the injuries sustained by the Class because they arise out of and are
17 caused by Defendants' common course of conduct as alleged herein.

18 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent and
19 protect the interests of all members of the Class because it is in his best interests
20 to prosecute the claims alleged herein to obtain full compensation and penalties
21 due him and the Class. Plaintiff's attorneys, as proposed class counsel, are
22 competent and experienced in litigating large employment class actions and are
23 versed in the rules governing class action discovery, certification and settlement.
24 Plaintiff have incurred and, throughout the duration of this action, will continue
25 to incur attorneys' fees and costs that have been and will be necessarily
26 expended for the prosecution of this action for the substantial benefit of each
27 class member.
28

1 (d) Superiority: The nature of this action makes the use of class action adjudication
2 superior to other methods. A class action will achieve economies of time, effort
3 and expense as compared with separate lawsuits, and will avoid inconsistent
4 outcomes because the same issues can be adjudicated in the same manner and at
5 the same time for each Class. If appropriate this Court can, and is empowered
6 to, fashion methods to efficiently manage this case as a class and/or collective
7 action.

8 (e) Public Policy Considerations: Employers in the State of California and other
9 states violate employment and labor laws every day. Current employees are often
10 afraid to assert their rights out of fear of direct or indirect retaliation. Former
11 employees are fearful of bringing actions because they believe their former
12 employers might damage their future endeavors through negative references
13 and/or other means. Class actions provide the class members who are not named
14 in the complaint with a type of anonymity that allows for the vindication of their
15 rights at the same time as affording them privacy protections.

16 **GENERAL ALLEGATIONS**

17 21. At all relevant times herein, Defendants classified and treated Plaintiff and other
18 persons as exempt employees.

19 22. Defendants employed Plaintiff as a software engineer from approximately December
20 27, 2011 until November 2, 2015. Defendants classified Plaintiff as an exempt employee, but
21 Plaintiff did not meet the requirements to be properly classified as an exempt employee within the
22 computer software field.

23 23. At all relevant times mentioned herein, Defendants have classified class members as
24 alleged exempt employees within the State of California.

25 24. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
26 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
27 knowledgeable about California wage and hour law, employment and personnel practices and the
28 requirements of California.

1 25. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
2 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of
3 which contribute to Defendants' deliberate unfair competition.

4 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive certain wages for
6 overtime compensation and that they were not receiving certain wages for overtime compensation.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive all meal periods or
9 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay
10 when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and
11 IWC Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one
12 (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not
13 receive a timely, uninterrupted meal period.

14 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive all rest breaks or
16 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when
17 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
18 members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and
19 class members' regular rate of pay when a rest break was missed.

20 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of wages
22 during their employment. In violation of the California Labor Code, Plaintiff and class members
23 did not receive payment of all wages including, but not limited to, unpaid overtime wages, within
24 permissible time periods.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and Waiting Time class members were entitled to timely payment
27 of wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
28 Waiting Time class members did not receive payment of all wages including, but not limited to,

1 unpaid overtime wages, meal period premiums, and rest break premiums within permissible time
2 periods.

3 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive complete and accurate
5 wage statements in accordance with California law. In violation of the California Labor Code,
6 Plaintiff and class members were not furnished with complete and accurate wage statements
7 showing their total hours worked, number of hours worked at each hourly rate and gross and net
8 wages, among other things.

9 32. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class
11 members, and that Defendants had the financial ability to pay such compensation but willfully,
12 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

13 33. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
14 against Defendants on behalf of himself and all class members to recover, among other things,
15 unpaid wages, interest, attorneys' fees, penalties, costs and expenses.

16 **FIRST CAUSE OF ACTION**
17 **FAILURE TO PAY OVERTIME WAGES**
(Violation of Labor Code §§ 510, 515.5, 1194, and 1198)

18 34. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
19 though fully set forth herein.

20 35. California Labor Code § 1198 and the applicable IWC Wage Order provide that it is
21 unlawful to employ persons without compensating them at a rate of pay either one and one-half or
22 two-times that person's regular rate of pay, depending on the number of hours worked by the
23 person on a daily or weekly basis.

24 36. Specifically, the applicable IWC Wage Order provides that Defendants are and were
25 required to pay Plaintiff and class members employed by Defendants, at the rate of one and one-
26 half times their regular rate of pay for all hours worked in excess of 8 hours in a day or 40 hours in
27 a workweek.
28

1 37. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and class members employed by Defendants, and working more than 12
3 hours in a day, overtime compensation at a rate of two times their regular rate of pay.

4 38. California Labor Code § 510 codifies the right to overtime compensation at one and
5 one-half times the regular hourly rate for hours worked in excess of 8 hours in a day or 40 hours in
6 a week or for the first 8 hours worked on the seventh day of work, and to overtime compensation at
7 twice the regular hourly rate for hours worked in excess of 12 hours in a day or in excess of 8 hours
8 in a day on the seventh day of work.

9 39. During the relevant time period, Plaintiff and class members worked in excess of 8
10 hours in a day, in excess of 12 hours in a day and/or in excess of 40 hours in a week.

11 40. During the relevant time period, Plaintiff and class members were not paid proper
12 overtime compensation for all the hours they worked in excess of 8 hours in a day, in excess of 12
13 hours in a day and/or in excess of 40 hours in a week. For example, Defendants failed to properly
14 pay Plaintiff and class members for all overtime hours worked.

15 41. During the relevant time period, Defendants willfully failed to pay all overtime
16 wages owed to Plaintiff and class members.

17 42. Defendants' failure to pay Plaintiff and class members the unpaid balance of
18 overtime compensation, as required by California law, violates the provisions of California Labor
19 Code §§ 510 and 1198, and is therefore unlawful.

20 43. Pursuant to California Labor Code § 1194, Plaintiff and class members are entitled
21 to recover their unpaid balance of the full amount of unpaid overtime compensation, as well as
22 interest, costs and attorneys' fees.

23 44. In committing the violations as herein alleged, Defendants have knowingly and
24 willfully refused to perform their obligations to compensate Plaintiff and class members for all
25 wages earned. As a direct result, Plaintiff and class members have suffered and continue to suffer
26 substantial losses relating to the use and enjoyment of such compensation, wages, lost interest on
27 such monies and expenses and attorneys' fees in seeking to compel Defendants to fully perform
28

1 their obligations under state law, all to their respective damage in amounts according to proof at
2 trial.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS**
5 **(Violations of Labor Code §§ 226.7 and 512)**

6 45. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
7 though fully set forth herein.

8 46. Labor Code § 226.7 provides that no employer shall require an employee to work
9 during any meal period mandated by the IWC Wage Orders.

10 47. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any
11 person for a work period of more than five (5) hours without a meal period of not less than 30
12 minutes, except that when a work period of not more than six (6) hours will complete the day’s
13 work the meal period may be waived by mutual consent of the employer and the employee.”

14 48. Labor Code § 512(a) provides that an employer may not require, cause or permit an
15 employee to work for a period of more than five (5) hours per day without providing the employee
16 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
17 period per day of the employee is not more than six (6) hours, the meal period may be waived by
18 mutual consent of both the employer and the employee.

19 49. Labor Code § 512(a) also provides that an employer may not employ an employee
20 for a work period of more than ten (10) hours per day without providing the employee with a
21 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
22 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
23 employer and the employee only if the first meal period was not waived.

24 50. During the relevant time period, Plaintiff and class members did not receive
25 compliant meal periods for working more than five (5) and/or ten (10) hours per day as a result of,
26 among other things, the large volume of work they were required to complete.

27 51. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
28 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
compensation for each work day that the meal period is not provided.

1 52. At all relevant times, Defendants failed to pay Plaintiff and class members the full
2 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
3 section 11 of the applicable IWC Wage Order.

4 53. As a result of Defendants' failure to pay Plaintiff and class members an additional
5 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered and
6 continue to suffer a loss of wages and compensation.

7 **THIRD CAUSE OF ACTION**
8 **FAILURE TO PERMIT REST BREAKS**
 (Violation of Labor Code § 226.7)

9 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein

11 55. Labor Code § 226.7(a) provides that no employer shall require an employee to work
12 during any rest period mandated by the IWC Wage Orders.

13 56. Section 12 of the applicable IWC Wage Order states "every employer shall
14 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
15 middle of each work period" and the "authorized rest period time shall be based on the total hours
16 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
17 thereof" unless the total daily work time is less than three and one-half (3½) hours.

18 57. During the relevant time period, Plaintiff and class members did not receive a ten
19 (10) minute net rest period for every four (4) hours or major fraction thereof worked because they
20 were required to work through their daily rest periods.

21 58. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
22 an employer to pay an employee one additional hour of pay at the employee's regular rate of
23 compensation for each work day that the rest period is not provided.

24 59. At all relevant times, Defendants failed to pay Plaintiff and class members the full
25 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
26 section 12 of the applicable IWC Wage Order.

60. As a result of Defendants' failure to pay Plaintiff and class members an additional hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and continue to suffer a loss of wages and compensation.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES UPON SEPARATION
OF EMPLOYMENT AND WITHIN THE REQUIRED TIME
(Violations of Labor Code §§ 201, 202, 203 and 210)

61. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as though fully set forth herein.

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

63. During the relevant time period, Defendants willfully failed to pay Waiting Time Subclass Members all their earned wages upon termination including, but not limited to, overtime wages, either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

64. Defendants' failure to pay Waiting Time Subclass Members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

65. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed promptly upon discharge or resignation as required under California Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

66. Defendants willfully failed to pay Waiting Time Subclass Members all wages due and, as a result, owe Waiting Time Subclass Members regular daily wages for each day they were

1 not paid, at their regular rates of pay up to a thirty (30) day maximum pursuant to California Labor
2 Code § 203 all in an amount to be shown according to proof at trial.

3 67. Based on these violations, Plaintiff requests relief for the Waiting Time Subclass as
4 described herein and below.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
7 **(Violation of Labor Code § 226)**

8 68. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
9 though fully set forth herein.

10 69. California Labor Code § 226(a) requires employers to furnish their employees with
11 an accurate itemized writing that shows gross wages earned, total hours worked, all deductions, net
12 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
13 employee and the portion of his or her social security number as required by law, the name and
14 address of the legal entity that is the employer and all applicable hourly rates in effect during the
15 pay period and the corresponding number of hours worked at each hourly rate by the employee.

16 70. Defendants have intentionally and willfully failed to provide Plaintiff and class
17 members with complete and accurate wage statements. The deficiencies include, among other
18 things, the failure to list the gross wages earned, net wages earned, hours worked, and all applicable
19 hourly rates in effect during the pay period.

20 71. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
21 class members have suffered injury and damage to their statutorily protected rights. Specifically,
22 Plaintiff and class members have been injured by Defendants' intentional violation of California
23 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
24 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
25 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
26 Defendants have prevent Plaintiff and class members from determining if all hours worked were
27 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit
28 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,
thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in

1 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
2 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendant.

3 72. California Labor Code § 226(a) requires an employer to pay the greater of all actual
4 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
5 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
6 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
7 with California Labor Code § 226(a).

8 73. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
9 class members from knowing, understanding and disputing the wages paid to them, and resulted in
10 an unjustified economic enrichment to Defendant. As a result of Defendants' knowing and
11 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
12 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be
13 shown according to proof at trial.

14 74. Plaintiff and class members are also entitled to injunctive relief under California
15 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and
16 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

17 **SIXTH CAUSE OF ACTION**
UNFAIR BUSINESS PRACTICES

18 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

19 75. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
20 though fully set forth herein.

21 76. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
22 competition, which includes any "unlawful, unfair or fraudulent business act or practice"

23 77. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
24 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
25 practices have violated state law causing Plaintiff and class members to suffer and continue to
26 suffer injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
27 violation of the California Labor Code and IWC Wage Orders, such as failing to pay overtime
28 wages, failing to provide meal periods and rest breaks or compensation in lieu thereof, failing to

1 pay all wages due and owing upon separation of employment and in a timely manner, and failing to
2 furnish accurate wage statements, all in order to decrease their costs of doing business and increase
3 their profits.

4 78. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
5 class members wages and monies, thereby creating for Defendants an artificially lower cost of
6 doing business in order to undercut their competitors and establish and/or gain a greater foothold in
7 the marketplace.

8 79. At the time Plaintiff and class members were hired, Defendants knowingly,
9 intentionally and wrongfully misrepresented to each of them their conformance with the California
10 Labor Code and IWC Wage Orders including proper payments required by law.

11 80. At all relevant times herein, Defendants held themselves out to Plaintiff and class
12 members as being knowledgeable concerning the labor laws of California.

13 81. At all times relevant herein, Plaintiff and class members relied on and believed
14 Defendants' representations concerning their conformance with California's wage and hour laws all
15 to their detriment.

16 82. As a result of Defendants' intentional, willful, purposeful and wrongful
17 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,

18 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown
19 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
20 Defendants' acts constitute unfair and unlawful business practices under California Business and
21 Professions Code §§ 17200, *et seq.*

22 83. Defendants' violations of the California Labor Code and IWC Wage Orders and
23 their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices
24 because they were done in a systematic manner over a period of time to the detriment of Plaintiff
25 and class members.

26 84. As a result of the unfair business practices of Defendant, as alleged herein, Plaintiff
27 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be
28 shown according to proof at trial.

1 85. Plaintiff seek to enforce important rights affecting the public interest within the
2 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
3 has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the
4 general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are
5 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

6 **SEVENTH CAUSE OF ACTION**

7 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

8 86. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
9 though fully set forth herein.

10 87. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
11 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
12 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
13 violation of the code may, as an alternative, be recovered through a civil action brought by an
14 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
15 to the procedures specified in Labor Code § 2699.3.

16 88. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
20 period in which Defendant violated these provisions of the Labor Code.

21 89. Defendants' conduct violates numerous Labor Code sections including, but not
22 limited to, the following:

- 23 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, and 1198 for failure
24 to timely pay all earned wages (including overtime wages) owed to Plaintiff and
25 other aggrieved employees during employment and upon separation of
26 employment as herein alleged;

1 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
2 Plaintiff and other aggrieved employees and failure to pay premium wages for
3 missed meal periods as herein alleged;

4 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
5 other aggrieved employees and failure to pay premium wages for missed rest
6 periods as herein alleged;

7 (d) Violation of Labor Code § 1174 for failure to maintain accurate records of
8 Plaintiff and other aggrieved employees' hours of work, time they began and
9 ended work each day, and time they began and ended meal periods as herein
10 alleged; and

11 (e) Violation of Labor Code § 226 for failure to provide accurate itemized wage
12 statements to Plaintiff and other aggrieved employees as herein alleged.

13 90. Further, Labor Code § 558(a) provides "any employer or other person acting on
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
16 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
17 pay period for which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to an amount
20 sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to
21 the affected employee." Labor Code § 558(c) provides "the civil penalties provided for in this
22 section are in addition to any other civil or criminal penalty provided by law."

23 91. As set forth above, Defendants have violated numerous provisions of the Labor
24 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
25 seeks the remedies set forth in Labor Code § 558 for himself, the underpaid employees, and the
26 State of California.

92. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

93. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

94. PAGA imposes a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.

95. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

96. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment against Defendants as follows:

1. For certification of the proposed Class and Waiting Time Subclass and any other appropriate subclasses under California Code of Civil Procedure § 382;
2. For appointment of Hilario Paspé Cruz as the class representative;
3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
4. For general damages;
5. For special damages;
6. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
7. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;

1 8. For restitution as provided by California Business and Professions Code §§ 17200,
2 *et seq.*;

3 9. For an order requiring Defendants to restore and disgorge all funds to each employee
4 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
5 and, therefore, constituting unfair competition under California Business and Professions Code
6 §§ 17200, *et seq.*;

7 10. For an award of damages in the amount of unpaid compensation including, but not
8 limited to, unpaid wages, benefits and penalties according to proof, including interest thereon;

9 11. For pre-judgment interest;

10 12. For penalties pursuant to Labor Code § 2699 *et seq.*;

11 13. For reasonable attorney's fees and costs of suit to the extent permitted by law,
12 including pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code
13 §§ 226(e) and 1194; and

14 14. For such other relief as the Court deems just and proper.

15
16 Dated: January 7, 2016

AEGIS LAW FIRM, PC

17
18 By: _____

Jessica L. Campbell
Attorneys for Plaintiff