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ALAMEDA COUNTY

MAY 14 2014

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Pursuant to the Private Attorneys General Act

7
8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 GABRIEL F. AYALA, individually and on
behalf of the State of California and the
workforce in the interest of the general public,

11 Plaintiff,

12 vs.

13 COLD STORAGE MANUFACTURING,
14 INC., a California Corporation, COLD
STORAGE DESIGN & BUILD, INC., a
15 California Corporation; and DOES 1 through
20,

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17 Defendants.
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Case No. **RG14725346**

COMPLAINT FOR:

1. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194)
2. FAILURE TO PAY OVERTIME (LABOR CODE §510);
3. UNLAWFUL KICKBACK PAYMENTS (LABOR CODE §§221, 224)
4. FAILURE TO REIMBURSE WORK EXPENSES (LABOR CODE §2802);
5. REST PERIOD VIOLATIONS (LABOR CODE § 226.7);
6. MEAL PERIOD VIOLATIONS (LABOR CODE § 226.7);
7. WAITING TIME PENALTIES OR WAGES (LABOR CODE § 203);
8. WAGE STATEMENT PENALTIES, (LABOR CODE § 226);
9. VIOLATION OF UCL (BUS. & PROF. CODE §§ 17200 *et seq.*); and
10. PAGA PENALTIES FOR VIOLATIONS OF LABOR CODE (LABOR CODE §§2699 *et seq.*)

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2 **I. INTRODUCTION**

3 1. Plaintiff GABRIEL F. AYALA (hereinafter "PLAINTIFF") brings this action against
4 COLD STORAGE MANUFACTURING, INC. ("COLD STORAGE MFG"), COLD STORAGE
5 DESIGN & BUILD, INC. ("COLD STORAGE") and DOES 1 through 20 (collectively
6 "DEFENDANTS") for failure to pay wages owed, unlawful kickback payments, failure to
7 maintain accurate records, failure to provide proper rest and meal periods, and failure to reimburse
8 work expenses. This action is brought on behalf of the State of California to enforce the State's
9 labor laws and to collect penalties arising from DEFENDANTS' violations of the California Labor
10 Code. The allegations in this complaint are made on the basis of PLAINTIFF'S personal
11 knowledge, and on information and belief based on a reasonable investigation under the
12 circumstances.

13 2. DEFENDANTS engage in a pattern of wage theft through the enforcement of the
14 following unlawful practices: (a) forcing workers to supply their own tools and equipment but not
15 compensating them at twice the minimum wage or indemnifying them for necessary work
16 expenses; (b) forcing workers to repay part of their wages to DEFENDANTS or making
17 unauthorized deductions to their wages; (c) failing to keep accurate time of the start and stop of
18 shifts and of meal periods, and refusing to compensate workers for all "hours worked"; (d) failing
19 to provide required rest and meal periods or statutory compensation in lieu thereof; and (e) failing
20 to provide accurate wage statements. These practices and resulting violations are willful.

21 3. As a result of the violations described herein, PLAINTIFF seeks to recover unpaid
22 wages and all available remedies available to him under law. On behalf of the State of California,
23 PLAINTIFF seeks to enforce the Labor Code and collect penalties payable to the State and current
24 and former employees pursuant to the Private Attorneys General Act ("PAGA"), Cal. Labor Code
25 § 2699, *et seq.* PLAINTIFF has satisfied PAGA's pre-filing requirements and, by operation of law,
26 has obtained standing to act on the State's behalf. Although representative in nature, class
27 certification is not required in order to obtain workforce-wide relief under PAGA.

28 4. The unlawful practices described herein are contrary to the public policy of the State of
California and constitute a violation of California's Unfair Competition Law ("UCL"), Business

1 and Professions Code §§ 17200 *et seq.* PLAINTIFF has suffered injury in fact and loss of property
2 as a result of DEFENDANTS' conduct, and PLAINTIFF seeks restitution and injunctive relief
3 requiring compliance with all applicable wage and hour laws and regulations in the future and
4 preventing the unlawful and unfair business practices complained of herein. PLAINTIFF also
5 seeks declaratory relief enumerating all wage and hour violations so that DEFENDANTS and the
6 general public will have clarity and guidance as to DEFENDANTS' future employment practices.

7 8 **II. JURISDICTION AND VENUE**

9 5. This case is subject to the jurisdiction of this court pursuant to the California Labor
10 Code, California Business and Professions Code, and California Code of Civil Procedure.
11 DEFENDANTS are entities, partnerships, businesses and persons who conduct business in
12 Alameda County and are headquartered in Alameda County.

13 6. Venue is proper in this judicial district because DEFENDANTS maintain their principal
14 California offices in Alameda County, California. In addition, venue in Alameda County is proper
15 because DEFENDANTS have their address in Alameda, operate retail locations in Alameda, and
16 many of the alleged violations arose in Alameda.

17 18 **III. PARTIES**

19 **PLAINTIFF**

20 7. GABRIEL F. AYALA ("AYALA") is an individual residing in San Joaquin
21 County who was employed by DEFENDANTS as a non-exempt driver and construction worker in
22 California. AYALA was hired to drive a company work truck to transport company employees,
23 tools and equipment to and from jobsite. Chad Swan approved AYALA'S hire and his rate of pay
24 of \$13 per hour. AYALA was required to report to work daily at the location where the work truck
25 was located and to drive the work truck with crew and work equipment to designated jobsites,
26 generally several hours away from the report location. At the end of the day, AYALA was required
27 to drive the work truck with crew and work equipment back to the report location. En route to and
28 from the jobsites, AYALA and the crew were required to stop for materials and load or unload the

1 truck. AYALA was not compensated for the time spent driving and loading materials between the
2 report location and jobsite at the beginning and end of the day. AYALA was also required to
3 supply his own tools and equipment to perform construction work. However, he was neither
4 indemnified for the purchase and maintenance of tools and equipment, nor compensated at twice
5 the minimum wage. Additionally, DEFENDANTS deducted wages from AYALA without
6 authorization or forced AYALA to repay a portion of his wages. AYALA was not provided all
7 required meal and rest periods, or additional wages in lieu thereof, yet 30 minutes were
8 automatically deducted for meal periods whether provided or not. DEFENDANTS failed to
9 implement a timekeeping system to record accurately when the employee begins and ends each
10 work period and meal period. As a result of the failures described above, AYALA'S wage
11 statements were inaccurate and incomplete as to the total hours worked, wages earned and
12 applicable rates of pay. PLAINTIFF has suffered injury as a result of the inaccurate and
13 incomplete statements because PLAINTIFF cannot promptly and easily determine from the wage
14 statement the total hours worked, the appropriate pay rate or wages owed. Upon leaving
15 DEFENDANTS' employ, AYALA was not paid all wages owed, including without limitation, all
16 minimum, overtime, double-time, and rest and meal period wages owed. AYALA is an aggrieved
17 employee and has suffered injury in fact and lost money or property.

18 **DEFENDANTS**

19 8. COLD STORAGE MANUFACTURING, INC. ("COLD STORAGE MFG") is a
20 California corporation located at 740 Bradford Way, Union City, CA 94587. The entity operates
21 under license 304183 with Chad Swan and Peter Ng as officers and Donald E. Niederhaus as
22 Responsible Managing Officer (RMO). Peter Ng is the Agent for Service of Process. COLD
23 STORAGE MFG is sued as an employer and, pursuant to PAGA and Labor Code §§ 558 and
24 1197.1, as a "person" (within the meaning of Labor Code § 18) that "caused" the violations
25 described in this complaint. On information and belief, COLD STORAGE MFG created and
26 enforced the unlawful practices complained of. PLAINTIFF was hired by DEFENDANTS in
27 2010. PLAINTIFF completed a COLD STORAGE MFG employment application and an I-9,
28 Employment Eligibility Verification listing COLD STORAGE MFG as the employer. PLAINTIFF

1 was subject to the employment policies of COLD STORAGE MFG and was required to
2 acknowledge receipt of the Cold Storage Manufacturing, Inc. Policy and procedures Manual.
3 PLAINTIFF was required, as a condition of employment, to follow the "Cold Storage
4 Manufacturing, Inc. safety rules and 'Code of Safe Work Practices,'" as well as the paid time of
5 policy for authorization and payment of vacation, among other things. PLAINTIFF was also under
6 the "obligation to comply with Cold Storage Manufacturing, Inc.'s Injury and Illness Prevention
7 Program." Tools and equipment that PLAINTIFF was required to purchase were billed to COLD
8 STORAGE MFG and the cost of said tools and equipment later deducted or collected unlawfully
9 and without authorization from PLAINTIFF'S wages. COLD STORAGE MFG also paid
10 PLAINTIFF per diems designated as "Auto, Truck & Travel Expenses." COLD STORAGE MFG
11 is sued as a direct or joint employer and, under PAGA, as an entity that caused the violations
12 complained of.

13 9. COLD STORAGE DESIGN & BUILD, INC. ("COLD STORAGE DESIGN") is a
14 California corporation located at 740 Bradford Way, Union City, CA 94587. The entity operates
15 under license 857929 with Chad Swan as Responsible Managing Officer (RMO) and Peter Ng as
16 officer. Peter Ng is also the Agent for Service of Process. PLAINTIFF'S wage statements bear the
17 name of COLD STORAGE DESIGN. COLD STORAGE DESIGN is sued as an employer and,
18 pursuant to PAGA and Labor Code §§ 558 and 1197.1, as a "person" (within the meaning of Labor
19 Code § 18) that "caused" the violations described in this complaint. On information and belief,
20 COLD STORAGE DESIGN carried out the unlawful practices described in this complaint. COLD
21 STORAGE DESIGN is sued as a direct or joint employer and, under PAGA, as an entity that
22 caused the violations complained of.

23 10. COLD STORAGE MFG and COLD STORAGE DESIGN are part of the Cold
24 Storage Group, Inc. ("Cold Storage Group"), a collection of entities specializing in the design,
25 engineering and construction of cold storage facilities targeting the food industry. These entities
26 include: Cold Storage Manufacturing, Inc., Cold Storage Refrigeration, Inc., Cold Storage Design
27 and Build, Inc., and CS Concrete, Inc. The Cold Storage Group presents itself as an integrated
28 enterprise (see www.coldstoragemfg.com) offering a wide array of services that can be contracted

1 through the Cold Storage Group under the single-source construct approach. Donald Niederhaus,
2 Peter Ng and Chad Swan are officers and/or RMOs of these individual entities. On information
3 and belief, the entities that make up the Cold Storage Group operate as a single or integrated
4 enterprise and as joint employers.

5 11. PLAINTIFF is ignorant of the true names or capacities of the Defendants sued
6 herein under the fictitious names Does 1 through 20. Plaintiff will amend this complaint to allege
7 the true names or capacities of these Doe Defendants once they have been ascertained.
8 PLAINTIFF alleges that each Defendant in this complaint, whether named fictitiously or by true
9 name, is responsible in some manner for the occurrences herein alleged under one or more of the
10 following theories: as joint employers; as a single or integrated enterprise; as the agent, employee,
11 coconspirator, business affiliate, subsidiary, parent entity, owner and/or joint venturer of each
12 other Defendant, acting within the scope thereof; and/or as a person working on behalf of the
13 employers who violated or caused the violations of the California Labor Code and Wage Order
14 provisions alleged herein. On information and belief PLAINTIFF further asserts that the damages
15 herein alleged were actually and proximately caused by each Defendant's conduct.

16 IV. FACTUAL ALLEGATIONS

17 12. DEFENDANTS willfully failed to compensate PLAINTIFF and, on information
18 and belief, other current or former non-exempt employees for all "hours worked," within the
19 meaning of the applicable wage order(s). This failure to compensate is a consequence of the
20 following illegal compensation and labor practices that DEFENDANTS willfully enforce against
21 workers, including PLAINTIFF:

- 22 a. Requiring workers to supply tools and equipment necessary to perform their
23 work without paying workers twice the minimum wage or indemnifying
24 them for the expense of purchasing and maintaining tools and equipment, in
25 violation of the wage orders and Labor Code § 2802.
- 26 b. Forcing workers to repay part of their wages or making unauthorized
27 deductions from their wages, in violation of Labor Code §§ 221, 224.
- 28 c. Refusing to pay drivers for driving company work trucks that are used to

1 transport work equipment and work crews between the first location where
2 the drivers' presence is required and the jobsite, in violation of the wage
3 orders and Labor Code §§ 510 and 1194.

4 d. Refusing to pay workers for time during which workers are subject to
5 employer control, including mandatory travel time that occurs after the first
6 location where the worker's presence is required, in violation of the wage
7 orders and Labor Code §§ 510 and 1194.

8 e. Refusing to pay workers for off-the-clock work that is required or
9 knowingly suffered or permitted, in violation of the wage orders and Labor
10 Code §§ 510 and 1194.

11 f. Failing to accurately record the total "hours worked" and the time when
12 workers begin and end each work period and meal period, in violation of the
13 wage orders.

14 g. Refusing to pay workers premium rest and meal period wages when rest and
15 meal periods are not properly provided, in violation of the wage orders and
16 Labor Code §§ 226.7 and 512.

17 h. Failing to authorize and permit the requisite number of rest periods per shift,
18 in violation of the wage orders and Labor Code § 226.7.

19 i. Failing to schedule and relieve employees of all duty for timely meal breaks
20 of at least 30, uninterrupted minutes, and failing to provide second meal
21 breaks for shifts greater than 10 hours, in violation of the wage orders and
22 Labor Code §§ 226.7 and 512.

23 j. Failing to provide wage statements that contain accurate and complete wage,
24 hour and pay rate information as a result of the violations above, in violation
25 of Labor Code § 226.

26 k. Failing to pay all wages owed timely upon termination of the employment
27 relationship, in violation of Labor Code §§ 201-203.

28 13. Under *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, DEFENDANTS' failure

1 to maintain accurate records will shift the burden of proof to DEFENDANTS.

2 14. Pursuant to California Business and Professions Code § 17208, the statute of
3 limitations for an action to recover wages at issue is four years.

4
5 **V. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY STATUTORY OR AGREED UPON MINIMUM WAGE**
8 **(Violation of Cal. Lab. Code §§ 200 *et seq.*, 1197, 1194(a), 1194.2 & Wage Order(s))**

9 15. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

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

11 The minimum wage for employees fixed by the commission is the minimum
12 wage to be paid to employees, and the payment of a less wage than the
13 minimum so fixed is unlawful.

14 17. The applicable minimum wage set by the IWC in the Wage Orders was \$6.75 per
15 hour effective January 1, 2002. The IWC raised this rate to \$7.50 per hour effective January 1,
16 2007, and \$8.00 per hour effective January 1, 2008. However, where the employee is required to
17 supply tools and equipment, the minimum wage rate under the IWC wage orders is doubled.

18 18. The Minimum Wage provisions of California Labor Code are enforceable by
19 private civil action pursuant to California Labor Code § 1194 and California Business and
20 Professions Code §§ 17200 *et seq.* Labor Code section 1194(a) states:

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

26 19. Pursuant to California Labor Code § 1194.2, any action for minimum wage
27 incorporates the applicable wage order of the IWC and is subject to liquidated damages for unpaid
28 wages. California Labor Code § 1194.2 provides that:

In any action under Section 1194 ... to recover wages because of the payment of a
wage less than the minimum wages fixed by an order of the commission, an

1 employee shall be entitled to recover liquidated damages in an amount equal to the
2 wages unlawfully unpaid and interest thereon.

3 20. PLAINTIFF and, on information and belief, other current or former employees are
4 required to supply tools and equipment but are not paid at the twice the minimum wage for all
5 hours worked.

6 21. PLAINTIFF and, on information and belief, other current or former employees are
7 not compensated for mandatory travel that occurs after the first location where the employee's
8 presence is required.

9 22. PLAINTIFF and, on information and belief, other current or former employees are
10 required or knowingly suffered and permitted to perform work before and after the shift, including
11 loading of work trucks, purchase of supplies or equipment and delivery of supplies and equipment.
12 This time is "hours worked" within the meaning of the wage orders.

13 23. PLAINTIFF and, on information and belief, other current or former employees are
14 engaged as drivers but are not compensated for driving that occurs to and from jobsites. Said
15 employees drive work trucks that transport work tools and work crews to and from jobsites.
16 Driving is compensable as "hours worked" within the meaning of the wage orders.

17 24. PLAINTIFF and, on information and belief, other current or former employees are
18 automatically deducted time for meal periods, regardless of whether meal periods are provided or
19 not.

20 25. DEFENDANTS failed to keep accurate track of employee time, shifting the burden
21 to DEFENDANTS to disprove reasonable estimates of the amount of time that is unpaid.
22 *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 727.

23 26. PLAINTIFF and, on information and belief, other current or former employees are
24 owed wages for the violations above. DEFENDANTS failed to pay said wages when due, as
25 required by Labor Code § 204, and have not been paid them to date. The violation of California's
26 minimum wage laws is substantial and occurred regularly.

27 27. PLAINTIFF is entitled to payment of wages owed under California Labor Code §§
28 1197, 1194(a) and 1194.2 and the applicable wage orders.

1 35. PLAINTIFF and, on information and belief, other current or former employees are
2 entitled to wages at the applicable premium rate as a result of DEFENDANTS' practice of not
3 compensating them for all "hours worked," including mandatory travel, work performed off the
4 clock, and driving, as well as for meal period auto deductions.

5 36. PLAINTIFF and, on information and belief, other current or former employees are
6 owed wages for the violations above. DEFENDANTS failed to pay said wages when due, as
7 required by Labor Code § 204, and have not been paid them to date. The violation of California's
8 premium wage laws is substantial and occurred regularly, and DEFENDANTS' failure to maintain
9 accurate time records will shift the burden of proof.

10 37. PLAINTIFF is entitled to payment of wages owed under California Labor Code §§
11 510, 1197, 1194(a) and the applicable wage orders.

12 38. The overtime violations alleged in this complaint serve as predicates for PAGA
13 penalties, which are payable to the State of California and the workforce, pursuant to Labor Code §
14 2699, *et seq.* Pursuant to Labor Code §§ 558 and 1197.1, moreover, an employer or other person
15 who causes a wage violation is liable for wages payable to the affected worker as a civil penalty
16 under PAGA.

17 39. WHEREFORE, PLAINTIFF requests relief as described herein and below,
18 including unpaid wages, interest, attorney's fees and cost of suit.

19 THIRD CAUSE OF ACTION
20 UNLAWFUL KICKBACK PAYMENTS OR REBATES
 (Violation of Cal. Lab. Code §§ 200 *et seq.*, 1194 and Wage Orders)

21 40. PLAINTIFF incorporate all preceding paragraphs as though fully set forth herein.

22 41. California Labor Code § 221 makes it unlawful "...for any employer to collect or
23 receive from an employee any part of wages theretofore paid by said employer."
24

25 42. California Labor Code § 224 allows for deductions that are mandatory or required
26 under state or federal law, or when expressly authorized in writing by the employee for
27 "...insurance premiums or medical dues, or other deductions not amounting to a rebate or
28 deduction from the standard wage arrived at...pursuant to wage agreement or statute...."

1 43. DEFENDANTS periodically deduct or collect wages from PLAINTIFF (see Exhibit
2 1 hereto) and, on information and belief, other current or former employees. Said deductions or
3 collections are not authorized by law or written agreement, and amount to a misdemeanor pursuant
4 to Labor Code § 225.

5 44. PLAINTIFF is entitled to all lost wages owed and, pursuant to PAGA and Labor
6 Code § 225.5, DEFENDANTS are liable for penalties owed to the State of California and the
7 workforce.

8 45. WHEREFORE, PLAINTIFF requests relief as described herein and below,
9 including lost wages, interest thereon, attorneys fees and cost of suit.

10 **FOURTH CAUSE OF ACTION**
11 **REIMBURSEMENT OF EXPENSES**
12 **(Violation of California Labor Code § 2802)**

13 46. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

14 47. PLAINTIFF and, on information and belief, other current or former employees
15 were required to incur expenses in order to perform their work, including the purchase and
16 maintenance of tools. None of the work expenses incurred are reimbursed.

17 48. California Labor Code Section 2802 provides in pertinent part:

- 18 a) An employer shall indemnify his or her employee for all necessary
19 expenditures or losses incurred by the employee in direct consequence of
20 the discharge of his or her duties, or of his or her obedience to the
21 directions of the employer, even though unlawful, unless the employee, at
22 the time of obeying the directions, believed them to be unlawful.

- 21 c) For purposes of this section, the term "necessary expenditures or losses"
22 shall include all reasonable costs, including, but not limited to, attorney's
23 fees incurred by the employee enforcing the rights granted by this section.

24 49. PLAINTIFF is entitled to indemnification for all work expenses incurred. In
25 addition, the violation of Labor Code § 2802 as to the workforce serves as a predicate for PAGA
26 penalties. DEFENDANTS are thus liable to PLAINTIFF and, pursuant to PAGA, to the State of
27 California and workforce.

28 50. WHEREFORE, PLAINTIFF is entitled to recover the full amount of his expenses,

1 reasonable attorney's fees and cost of suit.

2 **FIFTH CAUSE OF ACTION**
3 **PREMIUM REST BREAK WAGES**
4 **(Violation of California Labor Code §§ 226.7, 512)**

5 51. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

6 52. PLAINTIFF alleges that DEFENDANTS failed to authorize and permit workers to
7 take statutory rest breaks.

8 53. DEFENDANTS required employees to work for periods of at least three and one-
9 half-hours (3 ½) without a state-mandated rest period of at least 10 minutes, and DEFENDANTS
10 failed to authorize and permit 2 paid rest periods for shifts longer than 6 hours, 3 paid rest periods
11 for shifts greater 10 hours, and 4 paid rest periods for shifts greater than 14 hours.

12 54. California Labor Code §226.7 states:

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

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

18 55. DEFENDANTS failed to schedule or authorize and permit statutory rest periods,
19 and failed to provide paid rest periods to piece rate employees. DEFENDANTS also failed to pay
20 additional wages in lieu of providing rest periods.

21 56. Rest periods were not voluntarily waived. Any express or implied waivers obtained
22 from PLAINTIFF were not willfully obtained, were not voluntarily agreed to, were a condition of
23 employment, or were part of an unlawful contract of adhesion.

24 57. PLAINTIFF is entitled to premium rest period wages pursuant to Labor Code §
25 226.7. DEFENDANTS are liable for PAGA penalties arising from the rest period violations
26 described herein.

27 58. WHEREFORE, PLAINTIFF is entitled to recover the full amount of his unpaid rest
28

1 period wages and all related penalties and remedies.

2 **SIXTH CAUSE OF ACTION**
3 **PREMIUM MEAL PERIOD WAGES**
4 **(Violation of California Labor Code §§ 226.7, 512 and Wage Orders)**

5 59. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

6 60. PLAINTIFF alleges that DEFENDANTS failed to provide meal periods.

7 61. The meal period provision of the IWC Wage Orders states:

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

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

26 * * *

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

62. Labor Code §§ 512 and 226.7 contain similar language.

63. PLAINTIFF and, on information and belief, other current or former employees
work more than five hours from the start of the shift without a duty-free meal period of no less
than 30 minutes. DEFENDANTS do not provide PLAINTIFF and, on information and belief, other
current or former employees with a second meal period for shifts greater than 10 or 12 hours. Meal

1 periods are neither scheduled nor accurately tracked, in violation of the wage orders, yet
2 DEFENDANTS automatically deduct 30 minutes for purported meal periods that do not take
3 place, are interrupted, are taken while "on duty," or are less than 30 minutes. DEFENDANTS'
4 failure to maintain accurate time records shifts the burden of proof to DEFENDANTS.

5 64. Meal periods were not voluntarily waived. Any express or implied waivers obtained
6 from PLAINTIFF were not willfully obtained, were not voluntarily agreed to, were a condition of
7 employment, or were part of an unlawful contract of adhesion.

8 65. DEFENDANTS failed to pay additional wages for meal periods that were not
9 provided. PLAINTIFF is entitled to premium meal period wages pursuant to Labor Code § 226.7,
10 and DEFENDANTS are liable for PAGA penalties arising from the meal period violations
11 described herein.

12 66. WHEREFORE, PLAINTIFF is entitled to recover the full amount of his unpaid rest
13 period wages and all related penalties and remedies.

14 SEVENTH CAUSE OF ACTION

15 FAILURE TO PAY WAITING TIME WAGES UPON TERMINATION OF THE
16 EMPLOYMENT RELATIONSHIP
(Violation of California Labor Code §§ 201 & 203)

17
18 67. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

19 68. Employees are entitled to payment of all wages owed immediately upon termination
20 or within 72 hours of resignation.

21 69. DEFENDANTS willfully failed to timely pay PLAINTIFF and other former
22 employees all wages due upon the termination of the employment relationship. As a result,
23 DEFENDANTS violated or caused to be violated California Labor Code §§ 201 and 202.

24 70. PLAINTIFF and other former employees are entitled to waiting time penalties
25 pursuant to California Labor Code § 203, which states:

26 If an employer willfully fails to pay, without abatement or reduction, in
27 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
28 employee who is discharged or who quits, the wages of the employee shall
continue as a penalty from the due date thereof at the same rate until paid or
until an action therefore is commenced; but the wages shall not continue for
more than 30 days... Suit may be filed for these penalties at any time before

1 the expiration of the statute of limitations on any action for the wages from
2 which the penalties arose.

3 71. As a result of the violations described in this complaint, DEFENDANTS have
4 failed to pay all wages owed to PLAINTIFF and other former employees upon termination of the
5 employment relationship.

6 72. More than 30 days have passed since PLAINTIFF and other former employees left
7 DEFENDANTS' employ without payment of all minimum, overtime, double-time, rest period,
8 meal period, in violation of Labor Code §§ 201, 202 and 203. As a consequence of
9 DEFENDANTS' willful conduct in not paying all earned wages, PLAINTIFF is entitled to 30
10 days' wages as a waiting time penalty under California Labor Code § 203, and pursuant to PAGA
11 cause of action below, DEFENDANTS are liable for waiting time penalties under Labor Code §§
12 201, 202, 203 and/or 256 for violations against former employees.

13 73. WHEREFORE, PLAINTIFF requests relief as described herein and below.

14 EIGHTH CAUSE OF ACTION

15 KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED WAGE
16 STATEMENT PROVISIONS
(Violation of California Labor Code § 226)

17 74. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

18 75. California Labor Code § 226(a) requires that employees be provided accurate
19 itemized wage statements containing gross and net wages earned, total hours worked and
20 applicable wage rates, among other statutory requirements.

21 76. PLAINTIFF and, on information and belief, other current or former employees
22 were not provided "accurate itemized statements" within the meaning of California Labor Code §
23 226, because of the violations described in this complaint. For example, the wage statements
24 provided by DEFENDANTS:

- 25 a. falsely understated the wages earned, due to the failure to pay at least
26 twice the minimum wage, and the failure to pay for all hours worked
27 and for rest and meal period premiums;
28 b. falsely understated the total hours worked due to DEFENDANTS'
failure to maintain accurate time records; and

1 d. falsely stated the applicable hourly rates, due to the failure to
2 compensate for and track all hours worked.

3 77. California Labor Code § 226(e) and (g) provide that employees may recover fifty
4 dollars (\$50) for an initial violation and one hundred dollars (\$100) thereafter up to four thousand
5 dollars (\$4,000), costs and reasonable attorney's fees for violating the obligation to provide a
6 proper, itemized wage statement. Additionally, an employee may seek injunctive relief to ensure
7 compliance with this requirement under the UCL.

8 78. DEFENDANTS failed to comply with Labor Code § 226 as a result of the wage
9 violations and timekeeping violations described above. These violations apply to PLAINTIFF and,
10 on information and belief, other current or former employees. By failing to comply with the Labor
11 Code § 226, DEFENDANTS have injured PLAINTIFF within the meaning of the statute, entitling
12 PLAINTIFF to up to \$4,000.00 in penalties. PLAINTIFF is additionally entitled to a penalty of
13 \$750 for DEFENDANTS' failure to comply with PLAINTIFF'S records request, as well as
14 injunctive relief to comply with this section. In addition, DEFENDANTS are liable for PAGA
15 penalties on a workforce-wide basis for providing inaccurate wage statements to current or former
16 employees.

17 79. WHEREFORE, PLAINTIFF seeks relief as described herein and below, including
18 penalties in an amount to be determined at trial, injunctive relief, cost of suit and attorneys fees.

19 NINTH CAUSE OF ACTION

20 UNFAIR AND UNLAWFUL ACTS IN VIOLATION OF
21 UNFAIR COMPETITION LAW
(California Bus. & Prof. Code §§ 17200 *et seq.*)

22 80. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

23 81. On information and belief, and at all relevant times, PLAINTIFF alleges that
24 DEFENDANTS, by and through policies and practices, engaged in unlawful activity prohibited by
25 Business and Professions Code §§ 17200, *et seq.*, including the following:

26 a. failing to compensate PLAINTIFF for all hours worked by, for example, improperly
27 recording or failing to record hours worked, paying according to schedule instead of
28

1 actual hours worked, refusing to pay for certain work, and not properly
2 compensating at the applicable overtime rate, in violation of the state's minimum
3 and overtime wage laws;

4 b. failing to provide rest periods and meal periods or compensation in lieu thereof, in
5 violation of state law;

6 c. failing to pay all wages due at the appropriate periodic intervals as required by
7 Labor Code § 204;

8 d. unlawfully deducting or collecting wages, in violation of Labor Code §§ 221, 224;

9 e. failing to pay all wages owed timely upon termination of the employment
10 relationship, in violation of state law;

11 f. failing to provide accurate itemized wage statements stating all hours worked, all
12 applicable pay rates, or all gross and net wages earned, in violation of state law; and

13 g. failing to maintain records showing when PLAINTIFF began and ended each work
14 period and meal period, or showing total daily hours worked or all wages earned, in
15 violation of state law; and

16 h. failing to comply with PLAINTIFF'S reasonable request for records under Labor
17 Code §226.

18 82. DEFENDANTS' actions as alleged herein constitute false, fraudulent, unlawful,
19 unfair, and deceptive business practices, within the meaning of Business and Professions Code §§
20 17200 et seq. PLAINTIFF has suffered injury in fact and has lost money or property as a result of
21 such unfair competition.

22 83. PLAINTIFF is entitled to an injunction and other equitable relief against
23 DEFENDANTS for such unlawful practices to prevent future damage for which there is no
24 adequate remedy at law, and to avoid a multiplicity of lawsuits.

25 84. As a result of DEFENDANTS' unlawful acts described herein, DEFENDANTS
26 have reaped and continue to reap unfair benefits and unlawful profits at the expense of
27 PLAINTIFF. DEFENDANTS should be enjoined from this activity and made to disgorge the ill-
28 gotten gains and restore to PLAINTIFF the wrongfully withheld wages, pursuant to Business and

1 Professions Code § 17203, as well as to enforce penalty provisions pursuant to § 17202.

2 85. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS
3 have been and continue to be unjustly enriched through false, fraudulent, unlawful, unfair, and
4 deceptive business practices as alleged throughout this Complaint. PLAINTIFF is and has been
5 prejudiced by DEFENDANTS' unfair trade practices.

6 86. As a direct and proximate result of DEFENDANTS' unfair business practices,
7 PLAINTIFF is entitled to equitable and injunctive relief from DEFENDANTS, including full
8 restitution and/or disgorgement of all wages which have been unlawfully withheld from them, and
9 enjoinder of DEFENDANTS to cease and desist from engaging in the practices described herein.

10 87. As a direct and proximate result of DEFENDANTS' unfair business practices,
11 PLAINTIFF is entitled, in accordance with Business and Professions Code § 17202, to
12 enforcement of penalties resulting from the business acts and practices described herein, and
13 entitled to enjoinder of DEFENDANTS to cease and desist from engaging in the practices
14 described herein.

15 88. On information and belief, the unlawful conduct alleged herein is continuing, and
16 there is no indication that DEFENDANTS will cease such activity. PLAINTIFF alleges that if
17 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, DEFENDANTS
18 will continue the practice of failing to properly compensate employees for all wages owed; provide
19 accurate wage statements; maintain required records; or pay all wages owed upon discharge.

20 89. WHEREFORE, PLAINTIFF requests relief as described herein and below and as
21 deemed just and proper by this Court.

22 TENTH CAUSE OF ACTION

23 PENALTIES PURSUANT TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS
24 GENERAL ACT (Cal. Labor Code § 2699, *et seq.*)

25 90. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

26 91. PLAINTIFF is an aggrieved employee within the meaning of Labor Code §2699(a).
27 PLAINTIFF brings this claim on behalf of himself, the State of California and other current or
28 former aggrieved employees affected by the labor law violations alleged in this complaint.

1 92. PLAINTIFF has complied with the administrative requirements listed in Labor
2 Code § 2699.3 that are prerequisites to bringing this action. PLAINTIFF gave notice to
3 DEFENDANTS and the Labor & Workforce Development Agency ("LWDA") of the violations
4 alleged herein and the theories and facts supporting those allegations. The LWDA has charged
5 PLAINTIFF with the duty of enforcing the Labor Code on the State's behalf and the interest of the
6 general public. PLAINTIFF also acts in representative fashion on behalf of the workforce, and
7 may proceed in such fashion without having to meet class certification requirements.

8 93. Acting under this statutory authority, PLAINTIFF seeks civil penalties for all
9 violations described in this complaint pursuant to Labor Code § 2699(a) (covering Labor Code
10 provisions that contain specific penalties) and § 2699(f) (prescribing default penalties for Labor
11 Code provisions that do not specify a penalty). PLAINTIFF is also entitled to an award of
12 attorneys' fees and costs as set forth below.

13 94. The violations described in this complaint serve as predicates for PAGA liability
14 and include all provision of Labor Code § 2699.5. DEFENDANTS violated the rights of workers,
15 including PLAINTIFF, as a result of the practices described in this complaint, including: (a) taking
16 unlawful kickback payments from workers (violation of sections 221-224, 225.5 and wage orders);
17 (b) forcing workers to supply tools but not paying them at a rate of at least twice the minimum
18 (violation of sections 1194, 1194.2, 1197, and wage orders); (c) refusing to compensate drivers for
19 the work of driving the company truck to transport work equipment and work crews (violation of
20 sections 510, 1194, 1194.2, 1197, and wage orders); (d) refusing to compensate workers for
21 mandatory travel (violation of sections 510, 1194, 1194.2, 1197, and wage orders); (e) forcing
22 workers to work off the clock and failing to compensate for all hours worked (violation of sections
23 510, 1194, 1194.2, 1197, and wage orders); (f) automatically deducting 30 minutes for meal
24 periods not taken (violation of sections 510, 1194, 1194.2, 1197, and wage orders); (g) failing to
25 comply with rest and meal period requirements and failing to pay premium rest period wages
26 (violation of sections 226.7, 512 and wage orders); (h) failing to comply with wage statement
27 requirements of section 226 and wage orders; (i) failing to comply with California's timekeeping
28 requirements (violation of sections 226 and wage orders); and (j) failing to pay all wages owed

1 upon termination of the employment relationship (violation of sections 201-203, 256).

2 95. The PAGA claims are also brought against DEFENDANTS pursuant to Labor Code
3 provisions that impose liability on persons who *cause* violations of the Labor Code or Wage
4 Orders, including sections 558 and 1197.1.

5 96. California Labor Code § 558 states:

6 (a) Any employer or other person acting on behalf of an employer who
7 violates, or causes to be violated, a section of this chapter or any provision
8 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was underpaid in
addition to any amount sufficient to recover underpaid wages.

11 (2) For each subsequent violation, one hundred dollars (\$100) for
12 each underpaid employee for each pay period for which the employee
was underpaid in addition to an amount sufficient to recover underpaid
wages....

13 97. Similarly, Labor Code §1197.1(a) states:

14 Any employer or other person acting either individually or as an officer,
15 agent, or employee of another person, who pays or causes to be paid to
16 any employee a wage less than the minimum fixed by an order of the
commission shall be subject to a civil penalty and, restitution of wages,
and liquidated damages payable to the employee....

17 98. The viability of holding persons liable by this method was discussed by the
18 California Supreme Court in *Reynolds v. Bement*, where the court noted that liability against non-
19 employers could be obtained through the use of PAGA and § 558:

20 Imposition of individual civil liability under the IWC employer definition is
21 not the only means by which an employee can seek recovery against a
22 corporate agent. "The Berman hearing procedure is designed to provide a
23 speedy, informal, and affordable method of resolving wage claims" (*Cuadra*
24 *v. Millan, supra*, 17 Cal.4th at p. 858, 72 Cal.Rptr.2d 687, 952 P.2d 704),
25 and, as defendants concede, nothing in that process precludes hearing
26 officers from finding individual corporate agents liable for unpaid wages
27 when such liability is proven on established common law or statutory
28 theories. Moreover, pursuant to section 558, subdivision (a), any "person
acting on behalf of an employer who violates, or causes to be violated" a
statute or wage order relating to working hours is subject to a civil
penalty, payable to the affected employee, equal to the amount of any
underpaid wages. As noted earlier, the Legislature has provided that
aggrieved employees may under certain circumstances maintain civil
actions to recover such penalties. (§ 2699, subd. (a).) (Emphasis added.)

1 As such, DEFENDANTS are liable for causing the violations at issue.

2 99. WHEREFORE, PLAINTIFF request relief as described in this complaint and
3 below.

4 **VI. PRAYER**

5
6 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS and each of them
7 as follows:

- 8 1. For statutory minimum or agreed upon wages and interest thereon, as well as attorney's
9 fees and cost of suit, Cal. Labor Code §§ 200, *et seq.*, 1194, 1194.2, 1197.1 and wage
10 orders.
- 11 2. For liquidated damages arising from violations of minimum wage, Cal. Labor Code §
12 1194.2
- 13 3. For premium (overtime) wages and interest thereon, as well as attorney's fees and cost of
14 suit, Cal. Labor Code §§ 200, *et seq.*, 510, 1194, 1194.2, 1197.1 and wage orders.
- 15 4. For premium rest and meal period wages, Cal. Labor Code § 226.7, 512 and wage orders.
- 16 5. For lost wages as a result of DEFENDANTS' unlawful kickback or repayment scheme,
17 plus interest, attorney's fees and cost of suit, Cal. Labor Code §§ 200, *et seq.*
- 18 6. For an award of a preliminary and permanent injunction ordering DEFENDANTS to cease
19 the unlawful and unfair business practices as herein alleged.
- 20 7. For restitution to PLAINTIFF in amounts to be proven at trial.
- 21 8. For reimbursement of expenses, attorney's fees and costs pursuant to Labor Code § 2802
22 and wage orders.
- 23 9. For attorneys' fees, costs and interest on wages, pursuant to CCP § 1021.5.
- 24 10. For waiting time penalties pursuant to Labor Code § 203.
- 25 11. For an award of (a) actual damages for failure to maintain time records reflecting all hours
26 worked in an amount to be proven at trial, (b) statutory amounts, or in the alternative (c) \$50.00 for
27 the first violation and \$100.00 for each subsequent violation up to a maximum of \$4,000.00, per
28 each Plaintiff.

- 1 12. For an award of injunctive relief ordering DEFENDANTS to comply with Labor Code §
2 226, plus attorney's fees and costs.
- 3 13. For a penalty of \$750 for failing to comply with PLAINTIFF'S records request, plus
4 attorney's fees and cost of suit, Cal. Labor Code § 226.
- 5 14. For penalties and attorneys' fees and costs, pursuant to Labor Code §§ 226(e), 226(f),
6 226(h) and CCP §1021.5.
- 7 15. For an award of pre-judgment interest as authorized under the law.
- 8 16. For an award of post-judgment interest as authorized under the law.
- 9 17. For enforcement and an award of civil penalties pursuant to Labor Code § 2699, *et seq.* in
10 amounts to be proven at trial, as well as attorney's fees and costs, 2699(g)(1) & California
11 Code of Civil Procedure § 1021.5.
- 12 18. For penalties and all available relief pursuant to PAGA and all predicate provisions of the
13 Labor Code.
- 14 19. For wages as penalties, pursuant to Labor Code §§558, 1197.1 and 2699 *et seq.*
- 15 20. For such other relief as this Court deems just and proper.

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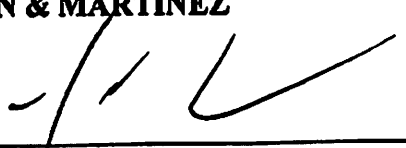
17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF hereby demands trial of his claims by jury to the extent authorized by law.

19 Dated: May 14, 2014

MALLISON & MARTINEZ

20

21 By: 

22 Stan S. Mallison
23 Hector R. Martinez
24 Marco A. Palau
25 Joseph D. Sutton
26 Attorneys for Plaintiff

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