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11 Attorneys for Representative Plaintiff  
12 And the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 NICHOLAS FORSYTHE, on behalf of  
16 himself and all other similarly situated,

17 Plaintiff,

18 vs.

19 HELIX ELECTRIC, INC. and DOES 1-  
20 100, inclusive,

21 Defendants.

Case No. **RG19027305**

**CLASS/COLLECTIVE ACTION**

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

**JURY TRIAL DEMANDED**



22 Representative Plaintiff alleges as follows:

23 **PRELIMINARY STATEMENT**

24 1. This is a class action seeking unpaid compensation for meal and/or rest period  
25 violations, interest thereon, reimbursement of business expenses, liquidated damages and other  
26 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,  
27 *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 558, 1174, 1174.5,  
28 1194, 1194.2, 1197, 1198, California Business and Professions Code §§ 17200, *et seq.* and  
California Code of Civil Procedure § 1021.5. Plaintiff Nicholas Forsythe ("Representative  
Plaintiff" or "Plaintiff") was employed by Helix Electric, Inc. ("Defendant") in California. At all  
times during the relevant period, Plaintiff was employed as a non-exempt electrician—installing

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 17 2019

CLERK OF THE SUPERIOR COURT

By JAMES THOMAS, Deputy

1 and maintaining electrical systems for Defendant's customers. Plaintiff brings this lawsuit on  
2 behalf of himself and on behalf of all other persons similarly situated who have been employed  
3 by Defendant as non-exempt electricians in the State of California within the applicable class  
4 period.

5 2. The class period is designated as July 16, 2015 through trial, based upon the  
6 allegation that the violations of California's wage and hour laws, as described more fully below,  
7 have been ongoing throughout that time.

8 3. During the class period, Defendant had a consistent policy of (1) failing to pay  
9 Plaintiff and Class Members for all hours worked, (2) permitting, encouraging and/or requiring  
10 Plaintiff and Class Members to work in excess of eight hours per day and/or in excess of forty  
11 hours per week without paying them overtime compensation as required by California's wage  
12 and hour laws, (3) unlawfully denying Plaintiff and Class Members statutorily-mandated meal  
13 and rest periods, and (4) willfully failing to provide Plaintiff and Class Members with accurate  
14 semimonthly itemized wage statements reflecting the total number of hours each worked, the  
15 applicable deductions, and the applicable hourly rates in effect during the pay period. In  
16 addition, Plaintiff is informed and believes and, on that basis, alleges that Defendant had a  
17 consistent policy of willfully failing to pay compensation (including unpaid overtime) in a  
18 prompt and timely manner to Plaintiff and Class Members whose employment has ended.

19  
20 **INTRODUCTION**

21 4. Defendant operates an electrical contracting company within California for which  
22 Representative Plaintiff worked as a non-exempt electrician. Representative Plaintiff is informed  
23 and believes and, on that basis, allege that, within the Class Period, Defendant employed  
24 hundreds of individuals as non-exempt electricians, employment positions which did not, and  
25 currently do not, meet any known test for exemption from the payment of overtime wages and/or  
26 the entitlement to meal or rest periods.

27 5. Despite actual knowledge of these facts and legal mandates, Defendant has and  
28 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers

1 by electing not to pay all wages due (including off the clock, overtime and missed meal and rest  
2 period compensation) and/or all penalties dues (including "waiting time" penalties) to its  
3 restaurant workers.

4 6. Representative Plaintiff is informed and believes and, based thereon, alleges that  
5 Defendant knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or  
6 ratified the violation of the laws cited herein.

7 7. Despite Defendant's knowledge of Class Members' entitlement to overtime pay  
8 and meal and/or rest periods for all applicable work periods, Defendant failed to provide same to  
9 the Class Members, in violation of California state statutes, the applicable California Industrial  
10 Welfare Commission Wage Order, and Title 8 of the California Code of Regulations. This action  
11 is brought to redress and end this prolonged pattern of unlawful conduct once and for all.

12  
13 **JURISDICTION AND VENUE**

14 8. This Court has jurisdiction over the Representative Plaintiff's and Class  
15 Members' claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable  
16 Industrial Welfare Commission Wage Order, Title 8 of the California Code of Regulations,  
17 various sections of the California Labor Code, and/or the California Code of Civil Procedure §  
18 1021.5.

19 9. This Court also has jurisdiction over the Representative Plaintiff's and Class  
20 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from  
21 Defendant's unfair and/or fraudulent business practices under California Business & Professions  
22 Code § 17200, *et seq.*

23 10. Venue as to Defendant is proper in this judicial district pursuant to California  
24 Code of Civil Procedure § 395(a). Defendant provides electrical contracting services within the  
25 County of Alameda (where Plaintiff and numerous Class Members worked), transacts business,  
26 has agents, and is otherwise within this Court's jurisdiction for purposes of service of process.  
27 The unlawful acts alleged herein have and have had a direct effect on Representative Plaintiff  
28 and those similarly situated within the State of California and within the County of Alameda.



CLASS ACTION ALLEGATIONS

1  
2           16.    The Representative Plaintiff brings this action on behalf of himself and as a class  
3 action on behalf of all persons similarly situated and proximately damaged by Defendant's  
4 conduct including, but not necessarily limited to, the following Plaintiff Class:

5                   All persons employed as non-exempt electricians by Helix  
6                   Electric, Inc., in California at any time on or after July 16, 2015.

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

10           a.    Numerosity: A class action is the only available method for the fair  
11               and efficient adjudication of this controversy. The members of the  
12               Plaintiff Class are so numerous that joinder of all members is  
13               impractical, if not impossible, insofar as Representative Plaintiff is  
14               informed and believes and, on that basis, alleges that there are  
15               sufficient Class Members to meet the numerosity requirement.  
16               Membership in the Class will be determined upon analysis of  
17               employee and payroll, among other, records maintained by  
18               Defendant.

19           b.    Commonality: The Representative Plaintiff and the Class Members  
20               share a community of interests in that there are numerous common  
21               questions and issues of fact and law which predominate over any  
22               questions and issues solely affecting individual members,  
23               including, but not necessarily limited to:

- 24                   1) Whether Defendant violated California Labor Code §§ 226.7  
25                   and/or 512 by failing to consistently provide duty-free meal  
26                   periods and/or rest periods to its non-exempt electricians;  
27                   2) Whether Defendant violated California Labor Code § 1194 by  
28                   failing to pay no less than the legal minimum wage for all  
                    hours worked to its non-exempt electricians;  
                    3) Whether Defendant violated California Business and  
                    Professions Code § 17200, *et seq.* by engaging in unfair,  
                    unlawful, and/or fraudulent business practices;  
                    4) Whether Defendant violated California Labor Code § 1174 by  
                    failing to keep accurate records of employees' hours of work;  
                    5) Whether Defendant violated California Labor Code §§ 201-  
                    204 by failing to pay wages due and owing at the time that  
                    Plaintiff's and certain Class Members' employment with  
                    Defendant terminated;

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6) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and

7) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

**COMMON FACTUAL ALLEGATIONS**

18. As described herein, for years, Defendant has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other service providers.

1           19. Defendant has declined to pay these wages, even upon a Class Member's  
2 termination or resignation from employment, in blatant violation of California Labor Code § 201  
3 and/or § 202.

4           20. California Labor Code §§ 201 and 202 require Defendant to pay severed  
5 employees all wages due and owed to the employee immediately upon discharge or within 72  
6 hours of resignation of their positions, in most circumstances. California Labor Code § 203  
7 provides that an employer who willfully fails to timely pay such wages must, as a penalty,  
8 continue to pay the subject employees' wages until the back wages are paid in full or an action is  
9 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

10           21. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class  
11 Members' entitlement to compensation for all hours worked, Defendant violated California  
12 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of  
13 time records by members of the Plaintiff Class. Defendant also failed to provide the  
14 Representative Plaintiff and Class Members with accurate semimonthly itemized statements of  
15 the total number of hours worked by each, and all applicable hourly rates in effect, during the  
16 pay period, in violation of California Labor Code § 226. In failing to provide the required  
17 documents, Defendant has not only failed to pay its workers the full amount of compensation due  
18 but the company has also, until now, effectively shielded itself from its employees' scrutiny by  
19 concealing the magnitude and financial impact of its wrongdoing that such documents might  
20 otherwise have led workers to discover.

21           22. Representative Plaintiff and all persons similarly situated are entitled to unpaid  
22 compensation, yet, to date, have not received such compensation despite many of the same  
23 having been terminated by and/or resigned from Defendant's employ. More than 30 days have  
24 passed since certain Class Members have left Defendant's employ.

25           23. As a consequence of Defendant's willful conduct in not paying former employees  
26 compensation for all hours worked in a prompt and timely manner, certain Class Members are  
27 entitled to up to 30 days wages as a penalty under California Labor Code § 203, together with  
28 attorneys' fees and costs.

1           24. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
2 herein, Representative Plaintiff and Class Members have sustained damages, as described above,  
3 including compensation for loss of earnings for hours worked on behalf of Defendant, in an  
4 amount to be established at trial. As a further direct and proximate result of Defendant's  
5 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting  
6 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide  
7 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California  
8 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate  
9 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class  
10 Members are also entitled to recover costs and attorneys' fees pursuant to California Code of  
11 Civil Procedure § 1021.5, among other authorities.

12           25. Representative Plaintiff seeks injunctive relief prohibiting Defendant from  
13 engaging in the complained-of illegal labor acts and practices in the future. Representative  
14 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members  
15 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will  
16 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt  
17 of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's  
18 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also  
19 entitled to recover costs and attorneys' fees, pursuant to statute.

20  
21                                   **FIRST CAUSE OF ACTION**  
22                                   **UNLAWFUL FAILURE TO PAY WAGES**  
                                  **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order(s))**

23           30. Plaintiff incorporates in this cause of action each and every allegation of the  
24 preceding paragraphs, with the same force and effect as though fully set forth herein.

25           31. During the limitations period, Plaintiff performed work for Defendant. The  
26 number of hours will be proven at trial.

27  
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1           32.     During the limitations period, Defendant refused to compensate Plaintiff for all of  
2 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the  
3 California Labor Code.

4           33.     Defendant's conduct, as heretofore detailed, represents underpayment of wages  
5 pursuant to California Labor Code § 558 for which Plaintiffs seek damages and/or penalties  
6 according to proof.

7           34.     As a direct and proximate result of Defendant's unlawful conduct, as set forth  
8 herein, Plaintiff has sustained damages, including loss of earnings for hours worked on behalf of  
9 Defendant, in an amount to be established at trial. As a further direct and proximate result of  
10 Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties in  
11 amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to  
12 statute.

13  
14                                                   **SECOND CAUSE OF ACTION**  
15                                                   **FAILURE TO PROVIDE MEAL AND REST PERIODS**  
                                                  **(California Labor Code §§ 226.7 and 512)**

16           35.     Representative Plaintiff incorporates in this cause of action each and every  
17 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
18 herein.

19           36.     At all relevant times, Defendant was aware of and were under a duty to comply  
20 with California Labor Code § 226.7 and §512.

21           37.     California Labor Code § 226.7 provides:

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

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

28           38.     Moreover, California Labor Code § 512(a) provides:

1 An employer may not employ an employee for a work period of  
2 more than five hours per day without providing the employee with  
3 a meal period of not less than 30 minutes, except that if the total  
4 work period per day of the employee is no more than six hours, the  
5 meal period may be waived by mutual consent of both the  
6 employer and employee. An employer may not employ an  
employee for a work period of more than 10 hours per day without  
providing the employee with a second meal period of not less than  
30 minutes, except that if the total hours worked is no more than  
12 hours, the second meal period may be waived by mutual  
consent of the employer and the employee only if the first meal  
period was not waived.

7 39. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that  
8 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-  
9 misclassified) employees.

10 40. Section 11 of the applicable IWC Wage Order provides:

11 (A) No employer shall employ any person for a work period of  
12 more than five (5) hours without a meal period of not less than  
30 minutes...

13 (B) An employer may not employ an employee for a work period  
14 of more than ten (10) hours per day without providing the  
employee with a second meal period of not less than 30  
15 minutes...

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

19 41. Moreover, Section 12 of the applicable IWC Wage Order provides:

20 (A) Every employer shall authorize and permit all employees to  
21 take rest periods, which insofar as practicable shall be in the  
middle of each work period. The authorized rest period time shall  
22 be based on the total hours worked daily at the rate of ten (10)  
minutes net rest time per four (4) hours or major fraction thereof  
23 ....

24 (B) If an employer fails to provide an employee a rest period in  
25 accordance with the applicable provisions of this order, the  
employer shall pay the employee one (1) hour of pay at the  
26 employee's regular rate of compensation for each workday that the  
rest period is not provided.

1 42. By failing to consistently provide uninterrupted thirty-minute meal periods within  
2 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to  
3 Representative Plaintiff and Class Members, Defendant violated the California Labor Code and  
4 applicable IWC Wage Order provisions.

5 43. Representative Plaintiff is informed and believes and, on that basis, alleges that  
6 Defendant has never paid the one hour of compensation to any Class Member due to its  
7 violations of the California Labor Code and applicable IWC Wage Order provisions.

8 44. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
9 herein, Representative Plaintiff and Class Members have sustained damages, including lost  
10 compensation resulting from missed meal and/or rest periods, in an amount to be established at  
11 trial.

12 45. As a further direct and proximate result of Defendant's unlawful conduct, as set  
13 forth herein, certain Class Members are entitled to recover other penalties, in amounts to be  
14 established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

15  
16 **THIRD CAUSE OF ACTION**  
**UNLAWFUL FAILURE TO PAY OVERTIME WAGES**  
17 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

18 46. Representative Plaintiff incorporates in this cause of action each and every  
19 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
20 herein.

21 47. During the relevant time period, Representative Plaintiff and Class Members  
22 worked, on many occasions, in excess of eight hours in a workday and/or 40 hours in a  
23 workweek. The precise number of overtime hours will be proven at trial.

24 48. During the relevant time period, Defendant refused to compensate Representative  
25 Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable  
26 IWC Wage Order and provisions of the California Labor Code.

27 49. Moreover, during the relevant time period, Representative Plaintiff and certain  
28 Class Members were employed by and thereafter terminated from Plaintiff's position with

1 Defendant, yet Representative Plaintiff and affected Class Members were not paid all wages due  
2 upon said termination of employment. Said non-payment of all wages due was the direct and  
3 proximate result of a willful refusal to do so by Defendant.

4 50. At all relevant times, Defendant was aware of, and were under a duty to comply  
5 with, the overtime provisions of the California Labor Code including, but not limited to,  
6 California Labor Code §§510, 1194, and 1198.

7 51. California Labor Code §510(a), in pertinent part, provides:

8 Any work in excess of eight hours in one workday and any work in  
9 excess of 40 hours in any one workweek and the first eight hours  
10 worked on the seventh day of work in any one workweek shall be  
compensated at the rate of no less than one and one-half times the  
regular rate of pay for an employee . . . .

11 52. California Labor Code §1194(a), in pertinent part, provides:

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

16 53. California Labor Code §1198, in pertinent part, provides:

17 The maximum hours of work and the standard conditions of labor  
18 fixed by the commission shall be the maximum hours of work and  
the standard conditions of labor for employees. The employment of  
19 any employee for longer hours than those fixed by the order or  
under conditions of labor prohibited by the order is unlawful.

20 54. By refusing to compensate Representative Plaintiff and certain Class Members for  
21 overtime wages earned, Defendant violated those California Labor Code provisions cited herein  
22 as well as the applicable IWC Wage Order(s).

23 55. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
24 herein, Representative Plaintiff and certain Class Members have sustained damages, including  
25 loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be  
26 established at trial, and is entitled to recover attorneys' fees and costs of suit.

27  
28

1  
2 **FOURTH CAUSE OF ACTION**  
3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
4 **(California Labor Code §§ 226 and 1174)**

5 56. Representative Plaintiff incorporates in this cause of action each and every  
6 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
7 herein.

8 57. California Labor Code § 226(a) provides:

9 Each employer shall semimonthly, or at the time of each payment  
10 of wages, furnish each of his or her employees either as a  
11 detachable part of the check, draft or voucher paying the  
12 employee's wages, or separately when wages are paid by personal  
13 check or cash, an itemized wage statement in writing showing: (1)  
14 gross wages earned; (2) total number of hours worked by each  
15 employee whose compensation is based on an hourly wage; (3) all  
16 deductions, provided that all deductions made on written orders of  
17 the employee may be aggregated and shown as one item; (4) net  
18 wages earned; (5) the inclusive date of the period for which the  
19 employee is paid; (6) the name of the employee and his or her  
20 social security number; and (7) the name and address of the legal  
21 entity which is the employer.

22 58. Moreover, California Labor Code § 226(e) provides:

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

59. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall. . . [k]eep, at a  
central location in the state...payroll records showing the hours  
worked daily by and the wages paid to...employees.... These  
records shall be kept in accordance with rules established for this  
purpose by the commission, but in any case shall be kept on file for  
not less than two years.

60. Representative Plaintiff seeks to recover actual damages, costs, and attorneys'  
fees under these provisions on behalf of himself and on behalf of all Class Members.

1           61. Defendant has failed to provide timely, accurate itemized wage statements to the  
2 Representative Plaintiff and Class Members in accordance with California Labor Code § 226.  
3 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the  
4 statements provided by Defendant accurately reflected actual gross wages earned, net wages  
5 earned, or the appropriate deductions of such Class Members.

6           62. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
7 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to  
8 be established at trial and are entitled to recover attorneys' fees and costs of suit.

9

10

**FIFTH CAUSE OF ACTION**  
**FAILURE TO PAY WAGES ON TERMINATION**  
**(California Labor Code § 203)**

11

12           63. Representative Plaintiff incorporates in this cause of action each and every  
13 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
14 herein.

15           64. California Labor Code § 203 provides that:

16           If an employer willfully fails to pay, without abatement or reduction, in  
17 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an  
18 employee who is discharged or who quits, the wages of the employee shall  
19 continue as a penalty from the due date thereof at the same rate until paid or  
20 until an action therefor is commenced; but the wages shall not continue for  
21 more than 30 days.

22           65. Numerous Class Members were employed by Defendant during the class period  
23 and were thereafter terminated or resigned from their positions, yet they were not paid all  
24 premium (overtime) wages due upon said termination or within 72 hours of said resignation of  
25 employment therefrom. Said non-payment was the direct and proximate result of a willful refusal  
26 to do so by Defendant.

27           66. More than 30 days have elapsed since certain Class Members were involuntarily  
28 terminated or voluntarily resigned from Defendant's employ.

1 67. As a direct and proximate result of Defendant's willful conduct in failing to pay  
2 said Class Members for all hours worked, affected Class Members are entitled to recover  
3 "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in  
4 an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

5  
6 **SIXTH CAUSE OF ACTION**  
**UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
7 **(California Business & Professions Code §§ 17200-17208)**

8 68. Representative Plaintiff incorporates in this cause of action each and every  
9 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
10 herein.

11 69. Representative Plaintiff further brings this cause of action seeking equitable and  
12 statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution  
13 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business  
14 practices described herein.

15 70. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or  
16 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-  
17 17208. Specifically, Defendant conducted business activities while failing to comply with the  
18 legal mandates cited herein.

19 71. Defendant has clearly established a policy of accepting a certain amount of  
20 collateral damage, as represented by the damages to the Representative Plaintiff and to Class  
21 Members herein alleged, as incidental to its business operations, rather than accept the  
22 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily  
23 borne by its responsible competitors and as set forth in legislation and the judicial record.

24  
25 **RELIEF SOUGHT**

26 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed  
27 Plaintiff Class, prays for judgment and the following specific relief against Defendant(s), and  
28 each of them, jointly and separately, as follows:

1           1.       That the Court declare, adjudge, and decree that this action is a proper class action  
2 and certify the proposed Class and/or any other appropriate subclasses under California Code of  
3 Civil Procedure § 382;

4           2.       That the Court declare, adjudge, and decree that Defendant willfully violated its  
5 legal duties to pay all wages due under the California Labor Code and the applicable California  
6 Industrial Welfare Commission Wage Orders;

7           3.       That the Court declare, adjudge, and decree that Defendants violated the overtime  
8 provisions of the California Labor Code and the applicable California Industrial Welfare  
9 Commission Wage Order as to Plaintiff;

10          4.       That the Court declare, adjudge, and decree that Defendants willfully violated  
11 their legal duties to pay overtime under the California Labor Code and the applicable California  
12 Industrial Welfare Commission Wage Orders;

13          5.       That the Court declare, adjudge, and decree that Plaintiff was, at all times relevant  
14 hereto, and is still, entitled to be paid overtime for work beyond 8 hours in a day and 40 hours in  
15 a week;

16          6.       That the Court make an award to Plaintiff of damages and/or restitution for the  
17 amount of unpaid overtime compensation, including interest thereon, and penalties in an amount  
18 to be proven at trial;

19          7.       That the Court make an award to the Representative Plaintiff and the Class  
20 Members of one hour of pay at each employee's regular rate of compensation for each workday  
21 that a meal period was not provided;

22          8.       That the Court make an award to the Representative Plaintiff and the Class  
23 Members of one hour of pay at each employee's regular rate of compensation for each workday  
24 that a rest period was not provided;

25          9.       That the Court Order Defendant to pay restitution to the Representative Plaintiff  
26 and the Class Members due to Defendant's unlawful activities, pursuant to California Business  
27 and Professions Code §§ 17200-17208;

28



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1 10. That the Court further enjoin Defendant, ordering it to cease and desist from  
2 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*

3 11. For all other Orders, findings and determinations identified and sought in this  
4 Complaint;

5 12. For interest on the amount of any and all economic losses, at the prevailing legal  
6 rate;

7 13. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure §  
8 1021.5; and


9 14. For costs of suit and any and all such other relief as the Court deems just and  
10 proper.

11  
12 **JURY DEMAND**

13 Representative Plaintiff, on behalf of himself, and the Plaintiff Class hereby demands a  
14 trial by jury.

15  
16 Dated: July 16, 2019

**SCOTT COLE & ASSOCIATES, APC**

17  
18 By:   
19 Andrew Daniel Weaver, Esq.  
20 Attorneys for Representative Plaintiff  
21 and the Plaintiff Class  
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