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7 and the Plaintiff Class

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

11 MICHAEL THOMAS, individually, and
12 on behalf of all others similarly situated

13 Plaintiffs,

14 vs.

15 LEXINGTON SERVICES COMPANY,
16 LLC and DOES 1 through 100, inclusive,

17 Defendants.

Case No.

CLASS ACTION

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

[Jury Trial Demanded]

18
19 Representative Plaintiff alleges as follows:

20
21 **INTRODUCTION**

22 1. This is a class action seeking unpaid regular and overtime wages, including
23 unpaid compensation for meal and/or rest period violations, interest thereon, reimbursement of
24 business expenses, liquidated damages and other penalties, injunctive and other equitable relief,
25 and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204,
26 inclusive, 226, 226.7, 226.8, 406, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802,
27 California Business and Professions Code §§ 17200, *et seq.* and California Code of Civil
28 Procedure § 1021.5. Plaintiff Michael Thomas ("Representative Plaintiff" or "Plaintiff") brings

1 this action on behalf of himself and all other persons similarly situated (“Class Members” and/or
2 the “Plaintiff Class”) who are or have been employed by defendants Lexington Services
3 Company, LLC and/or Does 1 through 100, inclusive (collectively “Defendant”) as an Internet
4 Technology support staff member within the State of California during the applicable class
5 period.

6 2. The class period is designated as the time from June 15, 2014 through trial, based
7 upon the allegation that the violations of California’s wage and hour laws, as described more
8 fully below, have been ongoing throughout that time.

9 3. During the class period, Defendant has had a consistent policy of (1) willfully
10 misclassifying Plaintiff and Class Members as independent contractors, (2) permitting,
11 encouraging and/or requiring Plaintiff to work in excess of eight hours per day and/or in excess
12 of forty hours per week without paying him overtime compensation as required by California’s
13 wage and hour laws, (3) unlawfully denying Plaintiff and Class Members statutorily-mandated
14 meal and rest periods, (4) willfully failing to provide Plaintiff and Class Members with accurate
15 semimonthly itemized wage statements reflecting the total number of hours each worked, the
16 applicable deductions, and the applicable hourly rates in effect during the pay period, and (5)
17 willfully failing to pay compensation in a prompt and timely manner to Plaintiff and those Class
18 Members whose employment with Defendant has terminated.

19 4. Defendant operates an internet technology support service within California for
20 which Representative Plaintiff worked as an Internet Technology support staff member. The
21 Representative Plaintiff is informed and believes and, on that basis, alleges that, within the Class
22 Period, Defendant employed hundreds of individuals in California in recent years to perform
23 Internet Technology support services, employment positions which did not, and currently do not,
24 meet any known test for exemption from the payment of overtime wages and/or the entitlement
25 to meal or rest periods.

26 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
27 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
28 by electing not to pay all wages due (regular and overtime wages, missed meal and rest period

1 compensation) and/or all penalties dues (including “waiting time” penalties) to its California
2 based internet technology support staff.

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

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

12 **JURISDICTION AND VENUE**

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

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

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

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PLAINTIFF

11. Representative Plaintiff Michael Thomas is a natural person who was employed by Defendant as an Internet Technology support staff member during the Class Period.

12. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment as set forth herein.

DEFENDANT

13. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, defendants Lexington Services Company, LLC, and Does 1 through 100, did business within the State of California providing Internet Technology support services. As detailed herein, Defendant’s usual course of business was to provide Internet Technology support services to clients, and that service was provided by Plaintiff and Class Members.

14. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that at all relevant times herein mentioned, defendants Lexington Services Company, LLC, and those identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and Class Members within the State of California.

15. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible

1 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and
2 that the Representative Plaintiff's and Class Members' damages, as herein alleged, were
3 proximately caused thereby.

4 16. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
5 all relevant times herein mentioned, each of the defendants was the agent and/or employee of
6 each of the remaining defendants and, in doing the acts herein alleged, was acting within the
7 course and scope of such agency and/or employment.

8 **CLASS ACTION ALLEGATIONS**

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

12 "All persons employed by Defendant as internet technology
13 support staff members in California at any time on or after June 15,
14 2014."

15 18. Defendant's officers and directors are excluded from the Plaintiff Class.

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

19 a. Numerosity: A class action is the only available method for the fair
20 and efficient adjudication of this controversy. The members of the
21 Plaintiff Class are so numerous that joinder of all members is
22 impractical, if not impossible, insofar as Representative Plaintiff is
23 informed and believes and, on that basis, alleges that there are
24 sufficient Class Members to meet the numerosity requirement.
25 Membership in the Class will be determined upon analysis of
26 employee and payroll, among other, records maintained by
27 Defendant.

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

- 1) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;

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- 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 3) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendant terminated;
 - 4) Whether Defendant violated California Labor Code § 226.8 by misclassifying employees as independent contractors;
 - 5) 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
 - 6) 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

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

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

9 22. During the class period, Plaintiff and Class Members performed services for
10 Defendant and its clients which were in the usual course of the Defendant's business. As a result,
11 Plaintiff and Class Members should have been classified as employees of Defendant and not as
12 independent contractors.

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

19 24. Moreover, according to Defendant's policies, Class Members were required to
20 incur business expenses related to the operations of Defendant. Despite this fact, Defendant has
21 failed, and continues to fail, to fully reimburse Plaintiff and Class Members for all such
22 expenses.

23 25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
24 Members' entitlement to compensation for all hours worked, Defendant violated California
25 Labor Code § 1174(d) by failing to provide or require the use, maintenance, or submission of
26 time records by members of the Plaintiff Class. Defendant also failed to provide the
27 Representative Plaintiff and Class Members with accurate semimonthly itemized statements of
28 the total number of hours worked by each, and all applicable hourly rates in effect, during the

1 pay period, in violation of California Labor Code § 226. In failing to provide the required
2 documents, Defendant has not only failed to pay its workers the full amount of compensation due
3 but the company has also, until now, effectively shielded itself from its employees' scrutiny by
4 concealing the magnitude and financial impact of its wrongdoing that such documents might
5 otherwise have led workers to discover.

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

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

14 28. In addition, Defendants engaged in a pattern and/or practice of willfully
15 misclassifying Plaintiff and Class Members as independent contractors, in violation of California
16 Labor Code § 226.8

17 29. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
19 including compensation for loss of earnings for hours worked on behalf of Defendant, in an
20 amount to be established at trial. As a further direct and proximate result of Defendant's
21 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
22 time" penalties (pursuant to California Labor Code § 203) and penalties for failure to provide
23 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
24 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate
25 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class
26 Members are also entitled to recover costs and attorneys' fees pursuant to California Code of
27 Civil Procedure § 1021.5, among other authorities.

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1 35. California Labor Code § 226.8(a)(1) provides that it is unlawful for any person or
2 employer to engage in willful misclassification of an individual as an independent contractor.

3 36. California Labor Code § 226.8(b) further provides that:

4 If the Labor and Workforce Development Agency or a court issues
5 a determination that a person or employer has engaged in any of
6 the enumerated violations of subdivision (a), the person or
7 employer shall be subject to a civil penalty of not less than five
8 thousand dollars (\$5,000) and not more than fifteen thousand
9 dollars (\$15,000) for each violation, in addition to any other
10 penalties or fines permitted by law.

11 37. California Labor Code § 226.8(c) further provides that:

12 If the Labor and Workforce Development Agency or a court issues
13 a determination that a person or employer has engaged in any of
14 the enumerated violations of subdivision (a) and the person or
15 employer has engaged in or is engaging in a pattern or practice of
16 these violations, the person or employer shall be subject to a civil
17 penalty of not less than ten thousand dollars (\$10,000) and not
18 more than twenty-five thousand dollars (\$25,000) for each
19 violation, in addition to any other penalties or fines permitted by
20 law.

21 38. As a direct and proximate result of Defendants' unlawful conduct, as set forth
22 herein, Plaintiff and the Plaintiff Class are entitled to recover penalties pursuant to California
23 Labor Code § 226.8, in an amount to be established at trial, as well as attorneys' fees and costs,
24 pursuant to statute.

25 **SECOND CAUSE OF ACTION**
26 **UNLAWFUL FAILURE TO PAY WAGES**
27 **(California Labor Code §§ 200-204, 510, 1194, and 1198; IWC Wage Order(s))**

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

40. During the limitations period, Plaintiff performed work for Defendant, oftentimes
in excess of eight hours in a workday and/or forty hours in a workweek. The number of hours
will be proven at trial.

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

1 42. At all relevant times, Defendant was aware of, and was under a duty to comply
2 with, the overtime provisions of the California Labor Code including, but not limited to,
3 California Labor Code §§ 510, 1194, and 1198.

4 43. California Labor Code § 510(a), in pertinent part, provides:

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

10 44. California Labor Code § 1194(a), in pertinent part, provides:

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

17 45. California Labor Code § 1198, in pertinent part, provides:

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

23 46. By refusing to compensate Plaintiff for overtime wages earned, Defendant
24 violated those California Labor Code provisions cited herein as well as the applicable IWC Wage
25 Order(s).

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

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

1 48. Representative Plaintiff incorporates in this cause of action each and every
2 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
3 herein.

4 49. At all relevant times, Defendant was aware of and was under a duty to comply
5 with California Labor Code § 226.7 and §512.

6 50. California Labor Code § 226.7 provides:

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

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

13 51. Moreover, California Labor Code § 512(a) provides:

14 An employer may not employ an employee for a work period of
15 more than five hours per day without providing the employee with
a meal period of not less than 30 minutes, except that if the total
16 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
17 employer and employee. An employer may not employ an
employee for a work period of more than 10 hours per day without
18 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
19 12 hours, the second meal period may be waived by mutual
consent of the employer and the employee only if the first meal
20 period was not waived.

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

24 53. Section 11 of the applicable IWC Wage Order provides:

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

27 (B) An employer may not employ an employee for a work period
28 of more than ten (10) hours per day without providing the

1 employee with a second meal period of not less than 30
2 minutes...

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

8 54. Moreover, Section 12 of the applicable IWC Wage Order provides:

9 (A) Every employer shall authorize and permit all employees to
10 take rest periods, which insofar as practicable shall be in the
11 middle of each work period. The authorized rest period time shall
12 be based on the total hours worked daily at the rate of ten (10)
13 minutes net rest time per four (4) hours or major fraction thereof
14

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

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

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

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

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

FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)**

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2 59. Representative Plaintiff incorporates in this cause of action each and every
3 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
4 herein.

5 60. California Labor Code § 226(a) provides:

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

14 61. Moreover, California Labor Code § 226(e) provides:

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

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

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

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

27 64. Defendant has failed to provide timely, accurate itemized wage statements to the
28 Representative Plaintiff and Class Members in accordance with California Labor Code § 226.

1 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
2 statements provided by Defendant accurately reflected actual gross wages earned, net wages
3 earned, or the appropriate deductions of such Class Members.

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

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

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

13 67. California Labor Code § 203 provides that:

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

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

25 69. More than 30 days have elapsed since certain Class Members were involuntarily
26 terminated or voluntarily resigned from Defendant’s employ.

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

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SIXTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES AND/OR PROHIBITED CASH BOND
(California Labor Code §§ 406 and 2802)

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

72. During the class period, Defendant required the Representative Plaintiff and Class Members to incur expenses related to the business operations of Defendant. These expenses include(d), without limitation, use of their personal vehicles for business purposes, use of their personal cellular devices for company purposes, uniforms, and equipment. These expenditures were incurred in direct consequence of the discharge of the duties of Representative Plaintiff and members of the Plaintiff Class, or of their obedience to the directions of the employer and have not yet been reimbursed by Defendant.

73. At all relevant times, Defendant was aware of and was under a duty to comply with various provisions of the California Labor Code, including, but not necessarily limited to §§ 406 and 2802(a).

74. California Labor Code § 406 provides:

Any property put up by an employee, or applicant as a part of the contract of employment, directly or indirectly, shall be deemed to be put up as a bond and is subject to the provisions of this article whether the property is put up on a note or as a loan or an investment and regardless of the wording of the agreement under which it is put up.

75. California Labor Code § 2802(a) provides:

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

76. By requiring the Representative Plaintiff and members of the Plaintiff Class to incur uncompensated expenses in direct consequence of the discharge of their duties, Representative Plaintiff and Class Members were forced and/or brought to contribute to the

1 capital and expenses of Defendant's business which is legally a cash bond and which must be
2 refunded by Defendant to each Class Member.

3 77. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post
4 judgment rate of ten percent simple interest per annum from the date of the expenditure, plus
5 attorneys' fees to collect reimbursement.

6 78. Therefore, Representative Plaintiff demands reimbursement for expenditures or
7 losses incurred by himself and other members of the Plaintiff Class in direct consequence of the
8 discharge of their duties, or of their obedience to the directions of the employer, plus return of all
9 cash bonds or other coerced investments in the business of Defendant, with interest, at the
10 statutory rate, plus attorneys' fees.

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13 **SEVENTH CAUSE OF ACTION**
14 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
15 **(California Business & Professions Code §§ 17200-17208)**

16 79. 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 80. Representative Plaintiff further brings this cause of action seeking equitable and
20 statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution
21 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business
22 practices described herein.

23 81. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
24 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
25 17208. Specifically, Defendant conducted business activities while failing to comply with the
26 legal mandates cited herein.

27 82. Defendant has clearly established a policy of accepting a certain amount of
28 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
Members herein alleged, as incidental to its business operations, rather than accept the

1 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
2 borne by its responsible competitors and as set forth in legislation and the judicial record.

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5 **RELIEF SOUGHT**

6 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed
7 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
8 of them, jointly and separately, as follows:

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

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

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

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

21 5. That the Court declare, adjudge and decree that Defendant violated California
22 Labor Code §§ 406 and 2802(a) by, *inter alia*, willfully failing to reimburse the Representative
23 Plaintiff and Class Members for expenses made on behalf of Defendant;

24 6. That the Court declare, adjudge and decree that Defendants engaged in a pattern
25 and/or practice of willfully misclassifying Plaintiff and Class Members as independent
26 contractors, in violation of California Labor Code § 226.8;

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