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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 CONTRA COSTA**

15 NICHOLAS ROBINSON, individually,
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 vs.

20 ONYX PROTECTIVE SERVICES,
21 INC., and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No.

CLASS ACTION

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

[Jury Trial Demanded]

C 18 - 0 1 1 4 7

FILED
2018 JUN -0 12 47
CLERK OF SUPERIOR COURT
CONTRA COSTA, CA
K. VAQUERANI

SUMMONS ISSUED

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 9, FOR ALL
PURPOSES.

24 Representative Plaintiff alleges as follows:

25 INTRODUCTION

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

COPY

1 Nicholas Robinson (“Representative Plaintiff” or “Plaintiff”) brings this action on behalf of
2 himself and all other persons similarly situated (“Class Members” and/or the “Plaintiff Class”)
3 who are or have been employed by defendants Onyx Protective Services, Inc., and/or Does 1
4 through 100, inclusive (collectively “Defendant”) as Patrol Officers and/or Security
5 Guards/Officers within the State of California within the applicable class period.

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

9 3. During the class period, Defendant has had a consistent policy of (1) permitting,
10 encouraging and/or requiring Plaintiff to work in excess of eight hours per day and/or in excess of
11 forty hours per week without paying him overtime compensation as required by California’s wage
12 and hour laws, (2) unlawfully denying Plaintiff and Class Members statutorily-mandated meal and
13 rest periods, (3) 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, and (4)
16 willfully failing to pay compensation in a prompt and timely manner to Plaintiff and those Class
17 Members whose employment with Defendant has terminated.

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

24 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
25 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
26 by electing not to pay all wages due (regular and overtime wages, missed meal and rest period
27 compensation) and/or all penalties dues (including “waiting time” penalties) to its California based
28 patrol officers and/or security guards/officers.

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

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

9 **JURISDICTION AND VENUE**

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

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

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

24
25 **PLAINTIFF**

26 11. Representative Plaintiff Nicholas Robinson is a natural person who was employed
27 by Defendant as a Security Officer during the Class Period.
28

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

4
5 **DEFENDANT**

6 13. Representative Plaintiff is informed and believes and, based thereon, alleges that,
7 at all times herein relevant, defendants Onyx Protective Services, Inc., and Does 1 through 100,
8 did business within the State of California providing security services.

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

16 15. The Representative Plaintiff is unaware of the true names and capacities of those
17 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
18 such fictitious names. The Representative Plaintiff will seek leave of court to amend this
19 Complaint when such names are ascertained. The Representative Plaintiff is informed and believes
20 and, on that basis, alleges that each of the fictitiously-named defendants was responsible in some
21 manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the
22 Representative Plaintiff's and Class Members' damages, as herein alleged, were proximately
23 caused thereby.

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

28

1 CLASS ACTION ALLEGATIONS

2 17. 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 conduct
4 including, but not necessarily limited to, the following Plaintiff Class:

5 "All persons employed by Defendant as patrol officers and/or
6 security guards/officers in California at any time on or after June 7,
7 2014."

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

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

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

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

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

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1 5) Whether Class Members are entitled to "waiting time"
2 penalties, pursuant to California Labor Code § 203.

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

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

20 e. Superiority of Class Action: Since the damages suffered by
21 individual Class Members, while not inconsequential, may be
22 relatively small, the expense and burden of individual litigation by
23 each member makes or may make it impractical for Class Members
24 to seek redress individually for the wrongful conduct alleged herein.
25 Should separate actions be brought, or be required to be brought, by
26 each individual Class Member, the resulting multiplicity of lawsuits
27 would cause undue hardship and expense for the Court and the
28 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

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

25 21. Defendant has declined to pay these wages, even upon a Class Member's
26 termination or resignation from employment, in blatant violation of California Labor Code § 201
27 and/or § 202.
28

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

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

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

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

25 26. As a direct and proximate result of Defendant's unlawful conduct, as set forth
26 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
27 including compensation for loss of earnings for hours worked on behalf of Defendant, in an amount
28 to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct,

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

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

16
17 **FIRST CAUSE OF ACTION**
18 **UNLAWFUL FAILURE TO PAY WAGES**
19 **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order(s))**

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

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

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

28

1 31. 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, California
3 Labor Code §§ 510, 1194, and 1198.

4 32. 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 33. 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 this
15 minimum wage or overtime compensation, including interest
16 thereon, reasonable attorneys' fees, and costs of suit.

17 34. 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 under
22 conditions of labor prohibited by the order is unlawful.

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

25 36. Defendant's conduct, as heretofore detailed, represents underpayment of wages
26 pursuant to California Labor Code § 558 for which Plaintiffs seek damages and/or penalties
27 according to proof.

28 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth
herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked
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.

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

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

6 39. At all relevant times, Defendant was aware of and was under a duty to comply with
7 California Labor Code § 226.7 and §512.

8 40. California Labor Code § 226.7 provides:

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

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

18 41. Moreover, California Labor Code § 512(a) provides:

19 An employer may not employ an employee for a work period of
20 more than five hours per day without providing the employee with
21 a meal period of not less than 30 minutes, except that if the total
22 work period per day of the employee is no more than six hours, the
23 meal period may be waived by mutual consent of both the employer
24 and employee. An employer may not employ an employee for a
25 work period of more than 10 hours per day without providing the
26 employee with a second meal period of not less than 30 minutes,
27 except that if the total hours worked is no more than 12 hours, the
28 second meal period may be waived by mutual consent of the
29 employer and the employee only if the first meal period was not
30 waived.

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

34 43. Section 11 of the applicable IWC Wage Order provides:

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

38 (B) An employer may not employ an employee for a work period of
39 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 that
7 the meal period is not provided.

8 44. 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 middle
11 of each work period. The authorized rest period time shall be based
12 on the total hours worked daily at the rate of ten (10) minutes net
13 rest time per four (4) hours or major fraction thereof

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

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

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

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

48. 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.

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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

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

6 50. California Labor Code § 226(a) provides:

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

19 51. Moreover, California Labor Code § 226(e) provides:

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

28 52. 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.

53. 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.

54. Defendant has failed to provide timely, accurate itemized wage statements to the
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 55. 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
8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES ON TERMINATION**
10 **(California Labor Code § 203)**

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

14 57. California Labor Code § 203 provides that:

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

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

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

28 60. As a direct and proximate result of Defendant's willful conduct in failing to pay
said Class Members for all hours worked, affected Class Members are entitled to recover "waiting

1 time” penalties of up to thirty days’ wages pursuant to California Labor Code § 203 in an amount
2 to be established at trial, together with interest thereon, and attorneys’ fees and costs.

3
4 **FIFTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
6 **(California Business & Professions Code §§ 17200-17208)**

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

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

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

18 64. Defendant has clearly established a policy of accepting a certain amount of
19 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
20 Members herein alleged, as incidental to its business operations, rather than accept the alternative
21 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
22 responsible competitors and as set forth in legislation and the judicial record.
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24
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1 RELIEF SOUGHT

2 WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed
3 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
4 of them, jointly and separately, as follows:

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

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

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

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

17 5. That the Court Order Defendant to pay restitution to the Representative Plaintiff
18 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
19 and Professions Code §§ 17200-17208;

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

22 7. For all other Orders, findings and determinations identified and sought in this
23 Complaint;

24 8. For interest on the amount of any and all economic losses, at the prevailing legal
25 rate;

26 9. That the Court make an award to Plaintiffs of penalties, pursuant to California
27 Labor Code §§ 203, 226, 558, and 1174.5, in an amount to be proven at trial;

28

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

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

JURY DEMAND

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

Dated: June 7, 2018

SCOTT COLE & ASSOCIATES, APC

By: _____
Andrew Weaver, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class