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8 And the Plaintiff Class

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

14 MICHAEL ORTIZ, on behalf of
himself and all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 AMAZON.COM LLC, a Delaware
Limited Liability Company; GOLDEN
19 STATE FC LLC, a Delaware Limited
Liability Company, and DOES 1
20 through 100, inclusive

21 Defendants.

) **Case No. 3:17-CV-03820-JSW**

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES, INJUNCTIVE RELIEF AND**
) **RESTITUTION**

) **[Jury Trial Demanded]**

22
23 Plaintiff alleges as follows:

24 **PRELIMINARY STATEMENT**

25 1. This is a class action seeking unpaid regular and overtime wages, including
26 unpaid compensation for interrupted and/or missed meal and/or rest periods, interest thereon,
27 liquidated damages and other penalties, injunctive and other equitable relief, and reasonable
28 attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive, 226,

1 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198 and/or 2698, *et seq.*, California
2 Business and Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure §
3 1021.5. Plaintiff Michael Ortiz (“Representative Plaintiff” or “Plaintiff”) was employed by
4 Amazon.com LLC and Golden State FC LLC (collectively “Defendants”) at three facilities in
5 California, including South San Francisco, San Leandro and Richmond. At all times during the
6 relevant period, Plaintiff was misclassified as an overtime-exempt Level 4 Manager. Plaintiff
7 brings this lawsuit on behalf of himself and on behalf of all other persons similarly situated who
8 have been employed by Defendants as Level 4 Managers in the State of California within the
9 applicable class period.

10 2. The class period is designated as June 2, 2013, through trial, based upon the
11 allegation that the violations of California’s wage and hour laws, as described more fully below,
12 have been ongoing throughout that time.

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

23 **INTRODUCTION**

24 4. Defendants operate an Internet-based retail company with numerous storage and
25 delivery facilities throughout California, including those three in which Representative Plaintiff
26 worked as a Level 4 Manager. The Representative Plaintiff is informed and believes and, on that
27 basis, alleges that, Representative Plaintiff’s employment position did not, and currently does
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1 not, meet any known test for exemption from the payment of overtime wages and/or the
2 entitlement to meal or rest periods.

3 5. Despite actual knowledge of these facts and legal mandates, Defendants have and
4 continue to enjoy an advantage over their competition and a resultant disadvantage to their
5 workers by electing not to pay all wages due (including overtime and missed meal and rest
6 period compensation) and/or all penalties dues (including “waiting time” penalties) to their
7 salaried Level 4 Managers at Defendants’ storage and delivery facilities.

8 6. Representative Plaintiff is informed and believes and, based thereon, allege that
9 officers of Defendants knew of these facts and legal mandates yet, nonetheless, repeatedly
10 authorized and/or ratified the violation of the laws cited herein.

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

16 **JURISDICTION AND VENUE**

17 8. This Court has jurisdiction over the Representative Plaintiff’s and Class
18 Members’ claims for unpaid wages and/or penalties under, *inter alia*, the applicable Industrial
19 Welfare Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code
20 §§201-204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and/or
21 2698, *et seq.*, and the California Code of Civil Procedure §1021.5.

22 9. This Court also has jurisdiction over the Plaintiff’s claims for injunctive relief and
23 restitution of ill-gotten benefits arising from Defendants’ unfair and/or fraudulent business
24 practices under California Business & Professions Code §17200, *et seq.*

25 10. Venue as to Defendants is proper in this judicial district pursuant to California
26 Code of Civil Procedure §395(a). Defendants maintain a delivery station within the County of
27 Contra Costa, transact business, have agents, and are otherwise within this Court’s jurisdiction
28 for purposes of service of process. The unlawful acts alleged herein have had a direct effect on

1 the Plaintiff within the State of California and within the County of Contra Costa. Defendants
2 operate said facility in the County of Contra Costa and throughout counties within the State of
3 California.

4 **PLAINTIFF(S)**

5 11. Representative Plaintiff Michael Ortiz is a resident of the State of California, and
6 a natural person, and was jointly employed by Defendants Amazon.com LLC, Golden State FC
7 LLC and Does 1 through 100. Representative Plaintiff was categorized by Defendants as a
8 salaried Level 4 Manager during the relevant time period.

9 **DEFENDANT(S)**

10 12. Defendant Amazon.com LLC is engaged in business in Contra Costa County and
11 throughout California.

12 13. Defendant Golden State FC LLC is engaged in business in Contra Costa County
13 and throughout California.

14 14. Representative Plaintiff is informed and believes and, based thereon, alleges that,
15 at all times herein relevant, Defendants Amazon.com LLC, Golden State FC LLC and Does 1
16 through 100, did business within the state of California operating storage and delivery facilities.

17 15. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
18 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
19 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
20 basis, alleges that at all relevant times herein mentioned, Defendants Amazon.com LLC, Golden
21 State FC LLC and those identified as Does 1 through 100, inclusive, employed, and/or exercised
22 control over the wages, hours, and/or working conditions of Plaintiff at South San Francisco, San
23 Leandro and Richmond, California, as identified in the preceding paragraph.

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

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

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

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8 **CLASS ACTION ALLEGATIONS**

9 18. 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 as Level 4 Managers by Amazon.com, LLC*
13 *and/or Golden State FC, LLC, in California at any time on or after*
14 *June 2, 2013.*

15 19. Amazon.com, LLC and Golden State FC, LLC, their officers and directors are
16 excluded from the Plaintiff Class.

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

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

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 Labor Code §§ 226.7
and/or 512 by failing to consistently provide duty-free meal

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periods and/or rest periods to its non-exempt drivers/chauffeurs;

- 2) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by engaging in unfair, unlawful, and/or fraudulent business practices;
- 3) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 4) 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;
- 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.

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3 **COMMON FACTUAL ALLEGATIONS**

4 21. As described herein, during the relevant time period, Defendants knowingly failed
5 to adequately compensate those employees within the class definition identified above for all
6 wages earned (including premium wages such as overtime wages and/or compensation for
7 missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage
8 Order, thereby enjoying a significant competitive edge over other retailers.

9 22. Defendants declined to pay these wages, even upon a Class Member's termination
10 from employment, in blatant violation of California Labor Code §201 and/or §202.

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

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

28 25. Representative Plaintiff and all persons similarly situated are entitled to unpaid
compensation, yet, to date, have not received such compensation despite having been terminated

1 by Defendants. More than 30 days have passed since Plaintiff and certain Class Members have
2 left Defendants' employment.

3 26. As a consequence of Defendants' willful conduct in not paying former employees
4 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff and
5 certain Class Members are entitled to up to 30 days wages as a penalty under California Labor
6 Code §203, together with attorneys' fees and costs.

7 27. As a direct and proximate result of Defendants' unlawful conduct, as set forth
8 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
9 including compensation for loss of earnings for hours worked on behalf of Defendants, in an
10 amount to be established at trial. As a further direct and proximate result of Defendants'
11 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
12 time" penalties (pursuant to California Labor Code §203) and penalties for failure to provide
13 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
14 Labor Code §226) in an amount to be established at trial. As a further direct and proximate result
15 of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Class Members
16 are also entitled to recover costs and attorneys' fees pursuant to California Labor Code §1194
17 and/or California Civil Code §1021.5, among other authorities.

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

26 29. Representative Plaintiff has complied with the procedures for bringing suit
27 specified in California Labor Code § 2699.3 necessary to maintain a civil action against
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1 Defendant for violation (and/or recovery under) California Labor Code §§ 200-204, inclusive,
2 226, 226.7, 512, 1174, 1174.5, 1194, and 1197.

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4 **FIRST CAUSE OF ACTION**
5 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
6 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

7 25. 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 26. During the relevant time period, Representative Plaintiff and Class Members
11 worked, on many occasions, in excess of eight hours in a workday and/or 40 hours in a
12 workweek. The precise number of overtime hours will be proven at trial.

13 27. During the relevant time period, Defendants refused to compensate
14 Representative Plaintiff and Class Members for all of the overtime wages earned, in violation of
15 the applicable IWC Wage Order and provisions of the California Labor Code.

16 28. Moreover, during relevant time period, Representative Plaintiff and certain Class
17 Members were employed by and thereafter terminated from Plaintiff's position with Defendants,
18 yet Representative Plaintiff and affected Class Members were not paid all wages due upon said
19 termination of employment. Said non-payment of all wages due was the direct and proximate
20 result of a willful refusal to do so by Defendants.

21 29. At all relevant times, Defendants were aware of, and were under a duty to comply
22 with, the overtime provisions of the California Labor Code including, but not limited to,
23 California Labor Code §§510, 1194, and 1198.

24 30. California Labor Code §510(a), in pertinent part, provides:

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

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

Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to

1 recover in a civil action the unpaid balance of the full amount of
2 this minimum wage or overtime compensation, including interest
thereon, reasonable attorneys' fees, and costs of suit.

3 32. California Labor Code §1198, in pertinent part, provides:

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

7 33. By refusing to compensate Representative Plaintiff and certain Class Members for
8 overtime wages earned, Defendants violated those California Labor Code provisions cited herein
9 as well as the applicable IWC Wage Order(s).

10 34. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Representative Plaintiff and certain Class Members have sustained damages, including
12 loss of earnings for hours of overtime worked on behalf of Defendants, in an amount to be
13 established at trial, and is entitled to recover attorneys' fees and costs of suit.

14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
16 **(California Labor Code §§ 226.7, 512, and 558)**

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

19 36. At all relevant times, Defendants were 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 any meal or rest period
23 mandated by an applicable order of the Industrial Welfare Commission.
- 24 (b) If an employer fails to provide an employee a meal period or rest period in accordance
25 with an applicable order of the Industrial Welfare Commission, the employer shall pay
the 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 not provided.

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

27 An employer may not employ an employee for a work period of
28 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

1 work period per day of the employee is no more than six hours, the
2 meal period may be waived by mutual consent of both the
3 employer and employee. An employer may not employ an
4 employee for a work period of more than 10 hours per day without
5 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.

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

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

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

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

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

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

19 (A) Every employer shall authorize and permit all employees to
20 take rest periods, which insofar as practicable shall be in the
middle of each work period. The authorized rest period time shall
21 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
....

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

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

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

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

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

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

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. California Labor Code §226(a) provides:

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

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

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in 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.

49. 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.

50. 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.

51. Defendants have failed to provide timely, accurate itemized wage statements to the Representative Plaintiff and Class Members in accordance with California Labor Code §226. Representative Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendants accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of Class Members.

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

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

53. 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.

54. California Labor Code §203 provides that:

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

55. Numerous Class Members were employed by Defendants during the relevant time period and was thereafter terminated from their positions, yet they were not paid all premium (overtime) wages due upon said termination of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendants.

56. More than 30 days have elapsed since Plaintiff and certain Class Members were involuntarily terminated from Defendants' employment.

57. As a direct and proximate result of Defendants' willful conduct in failing to pay 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.

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

58. 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.

59. Representative Plaintiff further brings this cause of action seeking equitable and statutory relief to stop Defendants' misconduct, as complained of herein, and to seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent business practices described herein.

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

1 thereon, and penalties in an amount to be proven at trial;

2 8. That the Court make an award to Representative Plaintiff and Class Members of
3 penalties, pursuant to California Labor Code §§ 203, 226, 558, 1174.5, 1197.1, *et seq.*, in an
4 amount to be proven at trial;

5 9. That the Court order Defendants to pay restitution to the Representative Plaintiff
6 and Class Members due to Defendants' unlawful activities, pursuant to California Business and
7 Professions Code §§17200-17208;

8 10. That the Court further enjoin Defendants, ordering them to cease and desist from
9 unlawful activities in violation of California Business and Professions Code §17200, *et seq.*

10 11. That the Court declare, adjudge, and decree that this action is a proper
11 representative action pursuant to California Labor Code § 2699;

12 12. That the Court make an award of civil penalties for violations of the Labor Code,
13 pursuant to California Labor Code § 2699;

14 13. For all other Orders, findings and determinations identified and sought in this
15 Complaint;

16 14. For interest on the amount of any and all economic losses, at the prevailing legal
17 rate;

18 15. For reasonable attorneys' fees, pursuant to California Labor Code §1194, 2699
19 and/or California Code of Civil Procedure §1021.5; and

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

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23 Dated: August 3, 2017

SCOTT COLE & ASSOCIATES, APC

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By: _____
Kevin Francis Barrett, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: August 3, 2017

SCOTT COLE & ASSOCIATES, APC

By: _____

Kevin Francis Barrett, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class

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