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 12 and the Plaintiff Class

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

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12	PEDRO POLIO, individually, and on behalf of all others similarly situated,)	Case No.
13)	<u>CLASS ACTION</u>
14	Plaintiffs,)	COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION
15	vs.)	[Jury Trial Demanded]
16	UNITY COURIER SERVICE, INC., and DOES 1 through 100, inclusive,)	
17	Defendants.)	

18
 19
 20 Representative Plaintiff alleges as follows:

21
 22 **PRELIMINARY STATEMENT**

23 1. This is a class action, brought on behalf of Pedro Polio (hereinafter "Representative
 24 Plaintiff") and all other persons similarly situated ("Class Members") who are or were employed as
 25 non-exempt courier service employees by defendants Unity Courier Service, Inc., and Does 1
 26 through 100, inclusive (collectively "Defendant" and/or "Unity") in California within the applicable
 27 class period. The Representative Plaintiff, on behalf of himself and the Class Members, seeks unpaid
 28 wages, including unpaid overtime compensation and interest thereon and other penalties, injunctive

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1 and other equitable relief, and reasonable attorneys' fees and costs under, *inter alia*, Title 8 of the
2 California Code of Regulations, California Business and Professions Code §§17200, *et seq.*,
3 California Code of Civil Procedure §1021.5, and various provisions of the California Labor Code.

4 2. The Class Period is designated as the time from June 7, 2007 through the date of trial,
5 based upon the allegation that the violations of California's wage and hour laws, as described more
6 fully below, have been ongoing throughout that time.

7
8 **INTRODUCTION**

9 3. The Representative Plaintiff is informed and believes and, based thereon, alleges that,
10 within the Class Period, Defendant Unity has employed hundreds of individuals in courier service
11 positions in recent years alone at its facilities/locations within the State of California.

12 4. Despite actual knowledge of these facts and legal mandates, Unity has enjoyed an
13 advantage over its competition and a resultant disadvantage to its workers by electing not to provide
14 all meal and/or rest periods to its non-exempt employees.

15 5. The Representative Plaintiff is informed and believes and, based thereon, alleges that
16 officers of Unity knew of these facts and legal mandates, yet, nonetheless, repeatedly directed,
17 authorized and/or ratified the violation of the laws cited herein.

18 6. Despite Unity Courier Service's knowledge of the Plaintiff Class' entitlement to meal
19 and/or rest periods for all applicable work periods, Unity failed to provide same to members of the
20 Plaintiff Class, in violation of the California Labor Code, Industrial Welfare Commission Wage
21 Orders and Title 8 of the California Code of Regulations. This action is brought to redress and end
22 this long-time pattern of unlawful conduct.

23
24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
26 claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare Commission Wage
27 Orders and Title 8 of the California Code of Regulations, California Labor Code §§ 201-203, 218,
28

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1 218.6, 226, 226.7, 512, 1174, 1174.5, 1194, and 1198 California Business & Professions Code §
2 17200, *et seq.* and California Code of Civil Procedure §1021.5.

3 8. This Court has further jurisdiction over the Representative Plaintiff's and Class
4 Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Defendant
5 Unity's unlawful business practices under California Business & Professions Code §§ 17203 and
6 17204.

7 9. Venue as to Defendant(s) is proper in this judicial district, pursuant to California
8 Code of Civil Procedure § 395(a). Defendant Unity provides courier/delivery services in the City and
9 County of San Francisco, and transacts business, has agents, and is otherwise within this Court's
10 jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect
11 on the Representative Plaintiff and those similarly situated within the State of California and San
12 Francisco County. Defendant Unity provides said services and has employed numerous Class
13 Members in San Francisco County as well as in other counties within the State of California.

14
15 **PLAINTIFFS**

16 10. During a portion of the herein-relevant time period, Plaintiff Pedro Polio (the
17 "Representative Plaintiff") was and is a natural person, and was, during the relevant time period
18 identified herein, employed by Defendant Unity in a courier service position, an employment
19 position which was entitled and continues to enjoy an entitlement to various conditions of
20 employment such as meal and/or rest periods.

21 11. In said position, the Representative Plaintiff was frequently permitted to work and did
22 work, during the Class Period, shifts exceeding five hours without an uninterrupted, unrestricted
23 meal period of not less than thirty minutes and was frequently permitted to work and did work four
24 hours or a "major fraction" thereof, without being afforded net ten minute rest periods.
25 Representative Plaintiff is informed and believes and, on that basis, alleges that this conduct of Unity
26 is/was commonplace at every facility owned and/or operated thereby.

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1 12. As used throughout this Complaint, the terms "Class Members" and/or the "Plaintiff
2 Class" refer to the named plaintiff herein as well as each and every person eligible for membership
3 in the Plaintiff Class, as further described and defined below.

4 13. The Plaintiff Class consists, generally, of all members who are/were employed as
5 non-exempt employees by Unity employed in courier service positions (as defined in paragraph 22
6 of this Complaint) within the State of California, and who (a) worked shifts exceeding four hours or
7 a major fraction thereof (i.e., of at least three and one-half hours), without being afforded net ten
8 minute rest periods during one or more work period(s) and/or (b) worked shifts exceeding five hours,
9 without being afforded an uninterrupted, unrestricted meal period of not less than thirty minutes.

10 14. At all times herein relevant, the Representative Plaintiff was and now is a person
11 within the class of persons further described and defined herein.

12 15. The Representative Plaintiff brings this action on behalf of himself and as a class
13 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities
14 similarly situated and proximately damaged by the unlawful conduct described herein.

15
16 **DEFENDANTS**

17 16. At all times herein relevant, defendants Unity Courier Service, Inc., and Does 1
18 through 100, inclusive (collectively referred to as "Unity" and/or "Defendant[s]") were business
19 entities, duly licensed and located and doing business in, but not limited to, the City and County of
20 San Francisco, in the State of California.

21 17. The Representative Plaintiff is informed and believes and, based thereon, alleges that
22 Defendant Unity directly or indirectly employs and, since June 7, 2007 has employed and/or
23 exercised control over the wages, hours and/or working conditions of the Representative Plaintiff
24 and Class Members employed by Unity in various California counties, including, but not necessarily
25 limited to, San Francisco County.

26 18. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
27 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each
28 of the remaining defendants. The Representative Plaintiff is informed and believes and, on that basis,

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1 alleges that, at all relevant times herein mentioned, each of the defendants identified as Does 1
2 through 100, inclusive, employed and/or exercised control over the wages, hours and/or working
3 conditions of the Representative Plaintiff and Class Members at various California locations, as
4 identified in the preceding paragraph.

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

12 20. The Representative Plaintiff is informed and believes and, on that basis, alleges that,
13 at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
14 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
15 scope of such agency and/or employment.

16 21. There is no preemption of the claims brought in this Complaint because these claims
17 are based upon State law. There is no dispute over the terms of any collective bargaining agreement
18 ("CBA") and there is no need to interpret the terms of any CBA.

19
20 **CLASS ACTION ALLEGATIONS**

21 22. The Representative Plaintiff brings this action on behalf of himself and as a class
22 action on behalf of all persons or entities proximately damaged by Defendants' conduct, including,
23 but not necessarily limited to, the following Plaintiff Class:

24 All persons who are/were employed in any courier service positions in California by
25 Unity Courier Service, Inc. and who (1) did not receive all uninterrupted, unrestricted
26 meal periods and/or all rest periods due for each period of work performed thereby at
any time since June 7, 2007 and (2) have not received all compensation/restitution
and associated penalties due as a result thereof.

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- 1 23. Defendants, their officers and directors are excluded from the Plaintiff Class.
- 2 24. This action has been brought and may properly be maintained as a class action under
- 3 California Code of Civil Procedure § 382 because there is a well-defined community of interest in
- 4 the litigation and the proposed Class is easily ascertainable.
- 5 a. Commonality: The Representative Plaintiff and the Class Members share a
- 6 community of interests in that there are numerous common questions and
- 7 issues of fact and law which predominate over any questions and issues
- 8 solely affecting individual members, including, but not necessarily limited to:
- 9 1) Whether Defendant Unity violated California Labor Code §§ 226.7
- 10 and/or 512 by failing to consistently provide meal and rest periods to
- 11 its non-exempt employees.
- 12 2) Whether Defendant Unity violated California Labor Code §§ 201-203
- 13 by failing to pay all “wages” and/or penalties due and owing at the
- 14 time that certain Class Members’ employment with Defendant
- 15 terminated.
- 16 3) Whether Defendant Unity violated California Business and
- 17 Professions Code § 17200 by failing to consistently provide meal
- 18 and/or rest periods to its non-exempt employees.
- 19 b. Typicality: The Representative Plaintiff’s claims are typical of the claims of
- 20 the Plaintiff Class. The Representative Plaintiff and all members of the
- 21 Plaintiff Class sustained damages arising out of and caused by Defendant
- 22 Unity’s common course of conduct in violation of law, as alleged herein.
- 23 c. Numerosity: A class action is the only available method for the fair and
- 24 efficient adjudication of this controversy. The members of the Plaintiff Class
- 25 are so numerous that joinder of all members is impractical, if not impossible.
- 26 Membership in the Plaintiff Class will be determined upon analysis of
- 27 employee and payroll, among other, records maintained by Unity.
- 28 d. 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 members of the Plaintiff Class to seek redress individually for
- the wrongful conduct alleged herein. Should separate actions be brought or
- be required to be brought by each individual member of the Plaintiff Class,
- 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.
- e. 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 interests in the litigation of this case as
- the Class Members. The Representative Plaintiff is committed to vigorous

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1 prosecution of this case and has retained competent counsel, experienced in
2 conducting litigation of this nature. The Representative Plaintiff is not subject
3 to any individual defenses unique from those conceivably applicable to the
4 Plaintiff Class as a whole. The Representative Plaintiff anticipates no
5 management difficulties in this litigation.

6 **COMMON FACTUAL ALLEGATIONS**

7 25. As described herein, Unity has, for years, knowingly failed to provide net ten minute
8 rest periods for work shifts exceeding four hours or a major fraction thereof (and at least three and
9 one-half hours) and/or uninterrupted, unrestricted meal period of not less than thirty minutes for
10 work shifts exceeding five hours to those non-exempt employees within the class definition
11 identified above, thereby enjoying a significant competitive edge over other corporations within its
12 industry. Even upon termination or resignation of the employment of numerous Class Members,
13 Unity has declined to compensate these employees therefor, in blatant violation of California Labor
14 Code §§ 201 and/or 202.

15 26. In so doing, Unity has not only failed to pay its workers the full amount of
16 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
17 unlawful conduct by concealing the magnitude and financial impact of its wrongdoing.

18 27. Moreover, California Labor Code §§ 201 and 202 require Defendant Unity to pay its
19 employees all wages due immediately upon discharge. California Labor Code § 203 provides that, if
20 an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to
21 pay the subject employees' wages until the back wages are paid in full or an action is commenced.
22 The penalty cannot exceed 30 days of wages.

23 28. The Representative Plaintiff is informed and believes and, on that basis, alleges that
24 many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date and despite the
25 termination of their employment with Unity Courier Service, have not received such compensation.

26 29. More than 30 days have passed since Plaintiff and particular other Class Members
27 have left Defendant Unity's employ.

28 30. As a consequence of Defendant Unity's willful conduct in not paying full
compensation to these terminated Class Members, Plaintiff and these particular Class Members are

1 entitled to 30 days wages as a penalty under California Labor Code § 203, together with interest
2 thereon and attorneys' fees and costs.

3 31. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
4 the Representative Plaintiff and members of the Plaintiff Class have sustained damages, as described
5 above, including a loss of compensation, in amounts to be established at trial. As a further direct and
6 proximate result of Defendant's unlawful conduct, as set forth herein, many Class Members herein
7 are entitled to recover "waiting time" penalties/wages (pursuant to California Labor Code § 203), in
8 an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
9 conduct, as set forth herein, the Representative Plaintiff and Class Members are entitled to recover
10 costs and attorneys' fees, pursuant to statute.

11
12 **FIRST CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
14 **(California Labor Code §§ 226.7 and 512)**

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

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

20 34. California Labor Code § 226.7 provides:

- 21 a. No employer shall require any employee to work during any
22 meal or rest period mandated by an applicable order of the
23 Industrial Welfare Commission.
24 b. If an employer fails to provide an employee a meal period or
25 rest period in accordance with an applicable order of the
26 Industrial Welfare Commission, the employer shall pay the
27 employee one additional hour of pay at the employee's
28 regular rate of compensation for each work day that the meal
or rest period is not provided.

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

An employer may not employ an employee for a work period of 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 work period per day of the employee is no more than six hours, the meal period

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

8 36. By failing to consistently provide uninterrupted and unrestricted meal periods and to
9 provide uninterrupted rest periods to its non-exempt employees, Defendant violated California Labor
10 Code §§ 226.7 and/or 512.

11 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
12 the Representative Plaintiff and the Class Members have sustained damages, including loss of
13 compensation/wages, in an amount to be established at trial. As a further direct and proximate result
14 of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Class
15 Members are entitled to recover various penalties, in an amount to be established at trial, as well as
16 costs and attorneys' fees, pursuant to statute.

17 **SECOND CAUSE OF ACTION**
18 **UNLAWFUL FAILURE TO PAY WAGES**
19 **(Violation of IWC Wage Order and California Labor Code §§ 510, 1194, and 1198)**

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

22 39. During the Class Period, the Representative Plaintiff and the Class Members worked,
23 on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The precise
24 number of overtime hours will be proven at trial.

25 40. During the Class Period, Defendant refused to compensate the Representative
26 Plaintiff and Class Members for all of wages earned, including overtime wages, in violation of the
27 applicable IWC Wage Order and provisions of the California Labor Code.

28 41. Moreover, during said time period, many of the Class Members herein were
employed by and thereafter terminated or resigned from their positions with Unity, yet were not paid
all wages due upon said termination or within 72 hours of said resignation of employment therefrom.

1 Said non-payment of all wages due was the direct and proximate result of a wilful refusal to do so by
2 Unity.

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

6 43. California Labor Code § 510, in pertinent part, provides:
7 Any work in excess of eight hours in one workday and any work in
8 excess of 40 hours in any one workweek and the first eight hours
9 worked on the seventh day of work in any one workweek shall be
compensated at the rate of no less than one and one-half times the
regular rate of pay for an employee

10 44. California Labor Code § 1194, 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
minimum wage or overtime compensation, including interest thereon,
reasonable attorney's fees, and costs of suit.

15 45. California Labor Code § 1198, in pertinent part, provides:
16 The maximum hours of work and the standard conditions of labor
17 fixed by the commission shall be the maximum hours of work and the
18 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.

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

22 47. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
23 the Representative Plaintiff and the Plaintiff Classes have sustained damages, including loss of
24 earnings for uncompensated hours worked on behalf of Unity Courier Service, in an amount to be
25 established at trial, and are entitled to recover attorneys' fees and costs of suit.

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

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48. The 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.

49. California Labor Code § 226(a) provides:

Each employer shall semi-monthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each 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.

50. 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.

51. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, 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.

52. 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.

53. Defendant has 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, based thereon, alleges that none of the

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1 statements provided by Defendant accurately reflected actual gross wages earned, net wages earned,
2 or the appropriate deductions for any Class Member.

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

6
7 **FOURTH CAUSE OF ACTION**
8 **FAILURE TO PAY WAGES WHEN DUE**
9 **(California Labor Code § 203 and 204)**

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

12 56. California Labor Code § 203 provides that:

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

19 57. California Labor Code § 204 provides, in part:

20 Labor performed between the 1st and 15th days, inclusive, of any
21 calendar month shall be paid for between the 16th and the 26th day of
22 the month during which the labor was performed, and labor
23 performed between the 16th and the last day, inclusive, of any
24 calendar month, shall be paid for between the 1st and 10th day of the
25 following month.

26 58. Representative Plaintiff and the Class Members were employed by Defendant during
27 the Class Period and did not receive all wages owed in the time dictated by California Labor Code §
28 204. Moreover, certain Class Members were employed by Unity during the Class Period and were
thereafter terminated or resigned from their positions, yet they were not paid all wages due
(including premium overtime wages) upon said termination or within 72 hours of said resignation of
employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to
do so by Unity.

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

3 66. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
4 the Representative Plaintiff and the Class Members have sustained damages, including loss of
5 earnings/wages, in an amount to be established at trial, and are entitled to restitution in such an
6 amount.

7
8 **RELIEF SOUGHT**

9 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the proposed Plaintiff
10 Class, prays for judgment and the following specific relief against Defendants, and each of them,
11 jointly and separately, as follows:

12 1. For an Order certifying the proposed Plaintiff Class and/or any other appropriate
13 subclass(es) under California Code of Civil Procedure § 382;

14 2. That Defendants are found to have violated California Labor Code § 512 for willful
15 failure to provide meal periods;

16 3. That defendants are found to have violated California Labor Code § 226.7 for willful
17 failure to provide rest periods;

18 4. That defendants are found to have violated California Labor Code §§ 201 and 202 for
19 willful failure to pay all compensation owed at the time of termination or within 72 hours of
20 resignation of employment to particular Class Members;

21 5. That defendants are found to have violated California Business & Professions Code §
22 17200 by failing to pay the Representative Plaintiff and Class Members all compensation for meal
23 and/or rest periods denied, and by failing to pay "waiting time" penalties to particular Class
24 Members;

25 6. An award to the Representative Plaintiff and the Plaintiff Class of damages for the
26 amount of unpaid compensation, including interest thereon, and penalties, in an amount to be proven
27 at trial;

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