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United State District Court

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

TOMAS SOLIS LARA, BENITO GONZALEZ,
AURELIO VASQUEZ MARTINEZ, MARTIN
ALVAREZ RODRIGUEZ, SANTOS
HERRERA, ABELARDO LOPEZ RAMOS, and
HONG SHIN PARK, on their own behalf and on
behalf of a class of similarly situated individuals,

Plaintiffs,

vs.

ASSI SUPER, INC., a California corporation;
DANIEL SEUNG CHUL RHEE, an individual;
JUN BAEK LEE, an individual; and DOES 1
through 50, inclusive,

Defendants.

No.: CV 03-5131 SVW(VBKx)

SECOND AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

CLASS ACTIONS

JURY TRIAL DEMANDED

1. Harassment on the Basis of
National Origin and/or Race
[Violation of Govt. Code § 12940]
2. Discrimination on the Basis of
National Origin and/or Race
[Violation of Govt. Code § 12940]
3. Retaliation for Opposing
Harassment and/or
Discrimination [[Violation of
Govt. Code § 12940(h)]
4. Failure to Prevent Harassment
and Discrimination [Violation
of Govt. Code §12940(k)]
5. Failure to Hire [Violation of
Govt. Code §12940(a)]
6. Failure to Pay Overtime
[Violation of Labor Code §§
200-03, 510, 1994;

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7. IWC Wage Order No. 5]
Failure to Provide Rest Periods
[Violation of Labor Code
§ 226.7 and IWC Wage Order
No. 5]
8. Breach of Contract
9. Fraud
10. Negligent Misrepresentation
11. Conversion
12. Negligent Appointment, Training
and/or Supervision
13. Negligent Infliction
of Emotional Distress
14. Assault and/or Battery
15. Unfair Business Practices
[Violation of Business &
Professions Code §17200 et seq.]

I. NATURE OF ACTION

1. Plaintiffs TOMAS SOLIS LARA, BENITO GONZALEZ, AURELIO VASQUEZ MARTINEZ, and MARTIN ALVAREZ RODRIGUEZ (collectively, "Discrimination Plaintiffs"), all of whom have worked as employees for defendant ASSI SUPER, INC. (hereafter "Assi Super"), bring claims on their own behalf and on behalf of a class of similarly-situated persons against Defendants for compensatory, consequential, statutory and punitive damages, injunctive relief, attorneys' fees and costs, and other appropriate relief, to remedy Defendants' unlawful harassment, discrimination, and retaliation in violation of the California Fair Employment and Housing Act ("FEHA"), Government Code § 12900 et seq. Discrimination Plaintiffs also bring parallel common law claims on their own behalf and on behalf of a class of similarly-situated person against Defendants for negligent appointment, training and/or supervision, and/or negligent infliction of emotional distress. Several Discrimination Plaintiffs also bring individual claims for assault and/or battery.

2. Plaintiff SANTOS HERRERA ("Applicant Plaintiff") brings claims on his own behalf and on behalf of a class of similarly-situated persons against Defendants for compensatory, consequential, statutory and punitive damages, injunctive relief, attorneys' fees and costs, and other appropriate relief, to remedy Defendants' unlawful failure to hire in violation of the FEHA, Government Code § 12900 et seq.

3. Plaintiffs ABELARDO LOPEZ RAMOS and HONG SHIN PARK (collectively, "Misclassified Plaintiffs"), both of whom have worked as salaried employees for Assi Super and were misclassified as exempt from the overtime provisions of wage and hour laws of California, bring claims individually and on behalf of a class of similarly-situated persons under California law, for compensatory damages, statutory penalties, liquidated damages, attorneys' fees and costs, and other appropriate relief, to remedy Defendants' violations of various provisions of the California Labor Code. Misclassified Plaintiffs also bring parallel common law claims for breach of contract, fraud, negligence, negligent misrepresentation, and conversion on their own behalf and on behalf of a class of similarly-situated persons.

4. Plaintiffs TOMAS SOLIS LARA, BENITO GONZALEZ, AURELIO VASQUEZ MARTINEZ, and MARTIN ALVAREZ RODRIGUEZ (collectively, "Rest Period Plaintiffs"), bring

1 claims on their own behalf and on behalf of a class of similarly-situated persons, including but not
 2 limited to the Latino workers and the cashiers at Assi Super, who were not provided state-mandated paid
 3 rest periods by Assi Super, in violation of California Labor Code § 226.7 and California Industrial
 4 Welfare Commission Occupational ("IWC") Wage Order No. 5 (Title 8 Cal. Code of Reg. § 11050).

5 5. Discrimination Plaintiffs, Applicant Plaintiffs, Misclassified Plaintiffs, and Rest Period
 6 Plaintiffs (collectively, "Plaintiffs") seek injunctive relief, disgorgement of profits and other appropriate
 7 equitable relief for Defendants' unlawful and unfair business practices under California Business and
 8 Professions Code § 17200 et seq.

9 **II. JURISDICTION**

10 6. This Court has jurisdiction over Plaintiffs' claims under the FEHA, California
 11 Government Code § 12965(b); California Labor Code §§ 203, 218, and 1194; and California Business &
 12 Professions Code §§ 17203 and 17204.

13 **III. VENUE**

14 7. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
 15 Procedure § 395. Defendants maintain offices, transacts business, has agents, and are found in Los
 16 Angeles County, and each Defendant is within the jurisdiction of this Court for purposes of service of
 17 process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated
 18 within the State of California and within Los Angeles County. Defendants operate facilities and employ
 19 numerous class members in Los Angeles County.

20 **IV. PARTIES**

21 8. Plaintiff TOMAS SOLIS LARA is Latino and worked primarily as a Stocker in the Deli
 22 and Grocery Departments for Assi Super from approximately March, 2000 through July, 2002. During
 23 his employment with Assi Super, Defendants, or some of them, subjected Lara to harassment on the
 24 basis of national origin and/or race, to different terms and conditions of employment with respect to
 25 promotions, working conditions, discipline, and wages based on his national origin and/or race, to
 26 unlawful retaliation, and/or to other unlawful treatment. Assi Super also failed to provide Lara with paid
 27 rest periods as required by California law.

28 9. Plaintiff BENITO GONZALEZ is Latino and worked as a Stocker in the Grocery

1 Department at Assi Super from approximately September, 1999 through July, 2002. During his
2 employment with Assi Super Defendants, or some of them, subjected Gonzalez to harassment on the
3 basis of national origin and/or race, to different terms and conditions of employment with respect to
4 promotions, working conditions, discipline, and wages based on his national origin and/or race, to
5 unlawful retaliation, and/or to other unlawful treatment. Assi Super also failed to provide Gonzalez with
6 paid rest periods as required by California law.

7 10. Plaintiff AURELIO VASQUEZ MARTINEZ is Latino and worked as a Stocker in the
8 Grocery Department at Assi Super from approximately January, 2000 through July, 2002. During his
9 employment with Assi Super, Defendants, or some of them, subjected Martinez to harassment on the
10 basis of national origin and/or race, to different terms and conditions of employment with respect to
11 promotions, working conditions, discipline, and wages based on his national origin and/or race, to
12 unlawful retaliation, and/or to other unlawful treatment. Assi Super also failed to provide Martinez with
13 paid rest periods as required by California law.

14 11. Plaintiff MARTIN ALVAREZ RODRIGUEZ is Latino and worked as a kitchen assistant
15 at Assi Super from approximately July, 2000, through July, 2002. During his employment with Assi
16 Super, Defendants, or some of them, subjected Rodriguez to harassment on the basis of national origin
17 and/or race, to different terms and conditions of employment with respect to promotions, working
18 conditions, discipline, and wages based on his national origin and/or race, to unlawful retaliation, and/or
19 to other unlawful treatment. Assi Super also failed to provide Rodriguez with paid rest periods as
20 required by California law.

21 12. Plaintiff SANTOS HERRERA is Latino and applied to worked at Assi Super in
22 approximately November, 2001. He was never hired. Defendants, or some of them, failed to hire
23 Herrera on the basis of his national origin and/or race.

24 13. Plaintiff ABELARDO LOPEZ RAMOS worked at Assi Super from approximately
25 September 25, 1998 through July 31, 2002. Plaintiff Ramos regularly worked in excess of forty (40)
26 hours per week and/or eight (8) hours per day, but failed to receive all overtime compensation to which
27 he was entitled by virtue of hours worked in excess of forty (40) hours per week and/or eight (8) hours
28 per day.

1 14. Plaintiff HONG SHIN PARK worked at Assi Super from approximately August 1, 2000
 2 through February 24, 2003. Plaintiff Park regularly worked in excess of forty (40) hours per week and/or
 3 eight (8) hours per day, but failed to receive all overtime compensation to which he was entitled by
 4 virtue of hours worked in excess of forty (40) hours per week and/or eight (8) hours per day.

5 15. Defendant ASSI SUPER is and has been at all times relevant herein a corporation
 6 qualified to do business within the State of California and conducting business in the County of Los
 7 Angeles, with its principal place of business in Los Angeles County, within the jurisdiction of this court.

8 16. Defendant SEUNG CHUL RHEE, a.k.a. Daniel Rhee, a.k.a. Seung Chul Lee, a.k.a.
 9 Daniel Lee, a.k.a. Seung Chung Yi, a.k.a. Daniel Yi (herein "Daniel Rhee"), a resident of Los Angeles
 10 County, is and has been at all times relevant herein the owner and/or the Chief Executive Officer for
 11 Assi Super. In this position, Daniel Rhee acts as a manager for Assi Super and a general supervisor of
 12 each Plaintiff and all other Assi Super managers and employees. In this position, he also acts as a
 13 decision-maker with regard to hiring of Assi Super employees.

14 17. Defendant JUN BAEK LEE, a resident of Los Angeles County, is and/or has been, at
 15 times relevant herein, the general manager and/or a manager for Assi Super. At times relevant herein,
 16 Assi Super and Daniel Rhee charged Jun Baek Lee with, and/or he assumed with their knowledge and
 17 acquiescence, supervisorial power and authority over Plaintiffs and other Assi Super employees.

18 18. Plaintiffs are ignorant of the true names and capacities of Defendants sued as DOES 1
 19 through 50, inclusive, and therefore sue said Defendants by such fictitious names. Plaintiffs will ask
 20 leave of court to amend this complaint to allege their true names and capacities when the same shall
 21 have been ascertained. Plaintiffs allege that each of the Defendants named as Does herein was in some
 22 manner responsible for the acts and omissions herein alleged and Plaintiffs will ask leave of court to
 23 amend this complaint to allege such responsibility when the same shall have been ascertained.

24 19. Plaintiffs are informed and believe and thereupon allege that, at all times material herein,
 25 each Defendant was the agent, employee and/or joint venturer of, or working in concert with his/her co-
 26 Defendants and was acting within the course and scope of such agency, employment and/or joint venture
 27 or concerted activity.

28 20. Defendant Assi Super and other Defendants are aware and have been aware at all relevant

1 times of the unlawful conduct of Defendants and/or their managers as alleged herein. Despite said
 2 knowledge and their ability to do so, Defendants have failed to censure, criticize, suspend, discharge or
 3 otherwise discipline any Defendant for his conduct. Consequently, Defendants have authorized,
 4 condoned and/or ratified and are, therefore, joint participants in the conduct of the other Defendants.

5 21. Plaintiffs are informed and believed, and thereon allege, that there exists such a unity of
 6 interest and ownership between Defendants that the individuality and separateness of Defendants have
 7 ceased to exist. The business affairs of Defendants are, and at all times relevant hereto were, so mixed
 8 and intermingled that the same cannot reasonably be segregated, and the same are in inextricable
 9 confusion. Defendants are, and at all times relevant hereto were, used by one another as a mere shell and
 10 conduit for the conduct of certain of Defendants' affairs. The recognition of the separate existence of
 11 each Defendant would not promote justice, in that it would permit Defendants to insulate themselves
 12 from liability to Plaintiffs. Accordingly, Defendants constitute the alter egos of each other, and the
 13 fiction of their separate existence must be disregarded at law and in equity, because such disregard is
 14 necessary to avoid fraud and injustice to Plaintiffs herein.

15 22. Whenever and wherever reference is made in this complaint to any act or failure to act by
 16 a Defendant or Defendants, such allegations and references shall also be deemed to mean the acts and/or
 17 failures to act by each Defendant acting individually, jointly, and severally.

18 23. Whenever and wherever reference is made to individuals who are not named as Plaintiffs
 19 or Defendants in this complaint but who during relevant time periods were employees, managers and/or
 20 agents of Assi Supér, such individuals at such relevant times shall be deemed to have acted or to have
 21 failed to act on behalf of Assi Super during and within the scope of their respective employment and/or
 22 agency with Assi Super.

23 **V. CLASS ACTION ALLEGATIONS**

24 24. Discrimination Plaintiffs' Class Action Allegations. Discrimination Plaintiffs allege the
 25 following:

26 (A) Discrimination Plaintiffs, as putative class representatives, bring their claims
 27 under the FEHA, their common law claims for negligent appointment, training and/or supervision,
 28 negligent infliction of emotional distress, and the California Business and Professions Code § 17200 et

1 seq. for damages and declaratory and injunctive relief on their own behalf and on behalf of a class
 2 comprised of all persons who were subject to harassment on the basis of national origin and/or race, to
 3 different terms and conditions of employment with respect to promotions, working conditions,
 4 discipline, and wages on the basis of national origin and/or race, and to retaliation for complaints about
 5 or resistance to such harassment or discrimination, at any time from October, 1998 to the present, as well
 6 as all persons who will be subject to such unlawful conduct in the future. Reference herein to
 7 Discrimination Plaintiffs includes both the named Plaintiffs and members of the class they seek to
 8 represent.

9 (B) Members of the class on whose behalf the class representatives sue are
 10 ascertainable but so numerous that joinder of all such members is impracticable. The class is expected
 11 to exceed seventy-five (75) individuals, including future class members whose joinder is inherently
 12 impossible.

13 (C) Discrimination Plaintiffs will fairly and adequately protect the interests of the
 14 class because Discrimination Plaintiffs' attorneys possess the requisite resources and ability to prosecute
 15 this case as a class action and because the class representatives' interests are consistent with, not
 16 antagonistic to, the interests of the class.

17 (D) Questions of fact and law regarding Defendants' unlawful employment practices
 18 and appropriate relief to eliminate those practices are common for the claims of all class members. The
 19 prosecution of separate actions against Defendants by individual class members would create a risk of
 20 inconsistent or varying adjudications which would establish incompatible standards of conduct for
 21 Defendants.

22 (E) The claims of Discrimination Plaintiff class representatives are typical of the claims
 23 of all class members Discrimination Plaintiffs seek to represent. The unlawful employment practices
 24 which have injured Discrimination Plaintiffs in violation of state law are identical to those which have
 25 and will continue to operate to deny other class members their rights under state employment statutes.

26 25. Applicant Plaintiff's Class Action Allegations. Applicant Plaintiff alleges the following:

27 (A) Applicant Plaintiff, as a putative class representative, brings his claims under the
 28 FEHA, and the California Business and Professions Code § 17200, et seq. for damages and declaratory

1 and injunctive relief on his own behalf and on behalf of a class comprised of all persons who were not
 2 hired on the basis of their national origin and/or race from October, 1998 to the present, as well as all
 3 persons who will not be so in the future. Reference herein to Applicant Plaintiff includes both the
 4 named Plaintiff and members of the class he seeks to represent.

5 (B) Members of the class on whose behalf the class representatives sue are
 6 ascertainable but so numerous that joinder of all such members is impracticable. The class is expected
 7 to exceed forty (40) individuals, including future class members whose joinder is inherently impossible.

8 (C) Applicant Plaintiff will fairly and adequately protect the interests of the class
 9 because Applicant Plaintiff's attorneys possess the requisite resources and ability to prosecute this case
 10 as a class action and because the class representative's interests are consistent with, not antagonistic to,
 11 the interests of the class.

12 (D) Questions of fact and law regarding Defendants' unlawful employment practices
 13 and appropriate relief to eliminate those practices are common for the claims of all class members. The
 14 prosecution of separate actions against Defendants by individual class members would create a risk of
 15 inconsistent or varying adjudications which would establish incompatible standards of conduct for
 16 Defendants.

17 (E) The claims of Applicant Plaintiff class representative are typical of the claims of all
 18 class members Applicant Plaintiff seeks to represent. The unlawful employment practices which have
 19 injured Applicant Plaintiff in violation of state law are identical to those which have and will continue to
 20 operate to deny other class members their rights under state employment statutes.

21 26. Misclassified Plaintiffs' Class Action Allegations. Misclassified Plaintiffs allege the
 22 following:

23 (A) Misclassified Plaintiffs bring their claims under California Labor Code § 1194,
 24 IWC Wage Order No. 5 (Title 8 Cal. Code of Reg. § 11050), their common law claims for breach of
 25 contract, fraud, negligence, negligent misrepresentation, and conversion, and California Business and
 26 Professions Code § 17200, et seq. for damages and declaratory and injunctive relief on behalf of all
 27 salaried, non-exempt employees of defendant Assi Super, during the applicable limitations period, whom
 28 Defendants refused to compensate for all overtime work performed in excess of eight (8) hours per day

1 and/or forty (40) hours per work week. Misclassified Plaintiffs allege on behalf of themselves and all
2 similarly-situated misclassified employees that Defendants unlawfully classified them as exempt from
3 overtime payments under California law and/or failed and refused to pay overtime premiums to them for
4 all overtime worked, notwithstanding that they are not and have not been exempt and are and have been
5 entitled to overtime pay, for overtime worked, and further that Defendants failed to record and maintain
6 time records as required by law. Misclassified Plaintiffs also assert class-wide claims under California
7 Labor Code §§ 203 and 558, alleging that Defendants failed to pay wages when due, and wilfully
8 violated California wage law. Reference herein to Misclassified Plaintiffs includes both the named
9 Plaintiffs and members of the class they seek to represent.

10 (B) Members of the class on whose behalf the class representatives sue are
11 ascertainable but so numerous that joinder of all such members is impracticable. The class is expected
12 to exceed forty (40) individuals, including future class members whose joinder is inherently impossible.

13 (C) Misclassified Plaintiffs will fairly and adequately protect the interests of the class
14 because Misclassified Plaintiffs' attorneys possess the requisite resources and ability to prosecute this
15 case as a class action and because the class representatives' interests are consistent with, not antagonistic
16 to, the interests of the class.

17 (D) Common questions of law and fact exist as to members of the class that
18 predominate over any questions affecting only individual members and include, but are not limited to,
19 the following:

20 (i) Whether Defendants unlawfully failed to pay overtime compensation in
21 violation of the California Labor Code and applicable Wage Orders;

22 (ii) Whether Misclassified Plaintiffs are non-exempt from the entitlement to
23 overtime compensation for overtime hours worked under the overtime pay requirements of California
24 law;

25 (iii) Whether Defendants' policy and practice of classifying as exempt from
26 overtime entitlement under California law and Defendants' policy and practice of failing to pay overtime
27 to Misclassified Plaintiffs and the class violates applicable provisions of California law, including
28 applicable Labor Code sections, applicable Wage Orders, and applicable state regulations;

(iv) Whether Defendants failed to pay wages when due within the meaning of California Labor Code § 203;

(v) Whether Defendants' conduct as alleged in this action was willful within the meaning of California Labor Code § 558;

(vi) The proper measure of damages sustained by Misclassified Plaintiffs;

(vii) Whether Defendants' practices as alleged herein constitute unfair business practices under California Business & Professions Code, § 17200 et seq.; and

(viii) Whether Plaintiffs are entitled to restitution, disgorgement of profits, or other equitable relief to remedy Defendants' unfair business practices.

(E) The claims of Misclassified Plaintiffs are typical of the claims of all class members Misclassified Plaintiffs seeks to represent. The unlawful employment practices which have injured Misclassified Plaintiffs in violation of state law are identical to those which have and will continue to operate to deny other class members their rights under state employment statutes.

27. Rest Period Plaintiffs' Class Action Allegations. Rest Period Plaintiffs allege the following:

(A) Rest Period Plaintiffs, as putative class representatives, bring their claim for violation of California Labor Code § 226.7, IWC Wage Order No. 5 (Title 8 Cal. Code of Reg. § 11050), and California Business and Professions Code § 17200, et seq., for damages and declaratory and injunctive relief on their our behalf and on behalf of a class comprised of employees including but not limited to all Latinos employees and cashiers. Reference herein to Rest Period Plaintiffs includes both the named Plaintiffs and members of the class they seek to represent.

(B) Members of the class on whose behalf the class representatives sue are ascertainable but so numerous that joinder of all such members is impracticable. The class is expected to exceed one hundred (100) individuals, including future class members whose joinder is inherently impossible.

(C) Rest Period Plaintiffs will fairly and adequately protect the interests of the class because Rest Period Plaintiffs' attorneys possess the requisite resources and ability to prosecute this case as a class action and because the class representative's interests are consistent with, not antagonistic to,

1 the interests of the class.

2 (D) Questions of fact and law regarding Defendants' unlawful employment practices
3 and appropriate relief to eliminate those practices are common for the claims of all class members. The
4 prosecution of separate actions against Defendants by individual class members would create a risk of
5 inconsistent or varying adjudications which would establish incompatible standards of conduct for
6 Defendants.

7 (E) The claims of Rest Period Plaintiffs class representative are typical of the claims of
8 all class members Rest Period Plaintiffs seek to represent. The unlawful employment practices which
9 have injured Rest Period Plaintiffs in violation of state law are identical to those which have and will
10 continue to operate to deny other class members their rights under state employment statutes.

11 28. Discrimination Plaintiffs' Tolling Allegations. On or about January 8, 2002, Tomas Solis
12 Lara filed an administrative claim with the Equal Employment Opportunity Commission ("EEOC"),
13 asserting the harassment and discrimination against Defendants as described herein. On or about
14 February 11, 2002, and August 6, 2002, Tomas Solis Lara filed an administrative claim with the EEOC,
15 asserting further retaliation claims against Defendants as described herein. On or about January 14,
16 2002, Benito Gonzalez filed an administrative claim with the EEOC, asserting the harassment and
17 discrimination against Defendants as described herein. On or about January 7, 2002, Aurelio Vasquez
18 Martinez filed an administrative claim with the EEOC, asserting the harassment and discrimination
19 against Defendants as described herein. On or about January 8, 2002, Martin Alvarez Rodriguez filed an
20 administrative claim with the EEOC, asserting the harassment and discrimination against Defendants as
21 described herein. On September 17, 2002, the EEOC issued cause determinations with respect to these
22 discrimination claims on behalf of a class of Assi Super employees. The EEOC issued right to sue
23 letters to the named Discrimination Plaintiffs on October 28, 2002. During their pendency, the named
24 Discrimination Plaintiffs' administrative claims tolled the statute of limitations on each and every claim
25 asserted herein by the Discrimination Plaintiffs.

26 29. Applicant Plaintiffs' Tolling Allegations. On or about January 8, 2002, Santos Herrera
27 filed an administrative claim with the EEOC, asserting Assi Super failed to hire him based on national
28 origin, race and/or ethnicity. On September 17, 2002, the EEOC issued cause determinations with

1 respect to this denial of hire claim due to national origin on behalf of a class of applicants. The EEOC
 2 issued a right to sue letter to Santos Herrera on October 28, 2002. During its pendency, Herrera's
 3 administrative claim tolled the statute of limitations on each and every claim asserted herein by the
 4 Applicant Plaintiffs.

5 30. Misclassified Plaintiffs' and Rest Period Plaintiffs' Tolling Allegations. On or about June
 6 7, 2002, Tomas Solis Lara submitted an administrative claim for wage and hour violations with the
 7 Department of Labor Standards Enforcement ("DLSE"). On or about June 7, 2002, Aurelio Vasquez
 8 Martinez submitted an administrative claim for wage and hour violations with the DLSE. In addition,
 9 Misclassified Plaintiffs and Rest Period Plaintiffs are informed and believe and thereon allege that other
 10 members of these classes have also submitted administrative claims for wage and hour violations with
 11 the DLSE. Upon information and belief, these administrative claims led to an investigation by the
 12 Bureau of Field Enforcement which uncovered evidence of the various wage and hour violations alleged
 13 herein. The administrative claims of members of these plaintiff classes have tolled and continue to toll
 14 the statute of limitations on each and every one of the claims asserted herein by Misclassified Plaintiffs
 15 and Rest Period Plaintiffs.

16 VI. FACTS OF THE CASE RELATING TO THE DISCRIMINATION

17 AND HARASSMENT CAUSES OF ACTION

18 31. Plaintiffs are informed and believe and thereupon allege that, beginning in or around
 19 October, 1998, each Defendant entered into a conspiracy and agreement with other Defendants and/or
 20 subsequently joined said conspiracy and ratified the prior acts and conduct of the Defendants who had
 21 previously entered into said conspiracy. Plaintiffs are currently unaware of when each Defendant joined
 22 said conspiracy, but, on information and belief, allege that all Defendants have knowingly, maliciously,
 23 and wilfully entered into said conspiracy which continues to this day. The purposes of said ongoing
 24 conspiracy include, but are not limited to, engaging in a pattern or practice of subjecting Assi Super's
 25 Latino employees to harassment, different terms and conditions of employment with respect to hiring,
 26 promotions, working conditions, discipline, and wages, and/or retaliation against Plaintiffs and/or others
 27 who have refused to acquiesce in or have complained about such harassment and discrimination. All of
 28 Defendants' acts and failures to act alleged herein were perpetrated in furtherance of said ongoing

1 conspiracy.

2 32. Defendants' pattern or practice of subjecting the Latino employees to harassment, 20
3 different terms and conditions of employment with respect to promotions, working conditions, 21
4 discipline, and wages, and/or retaliation, has been and continues to be characterized by and made up of, 22
5 but is not limited to, the following conduct: (1) regularly refusing to promote Latino employees and 23
6 instead promoting Korean and/or Korean American employees who are less qualified, and/or have less 24
7 experience and/or were trained by Latino employees who were not so promoted; (2) requiring Latino 25
8 workers to perform duties in addition to their regularly assigned duties, while the Korean and/or Korean 26
9 American workers rarely, if ever, were given such additional duties; (3) pressuring Latino workers to 27
10 work faster and to carry heavier loads than the Korean and/or Korean American workers; (4) subjecting 28
11 and/or allowing managers and/or co-workers to subject Latino workers to profanities and/or derogatory
12 language, while not subjecting the Korean and/or Korean American workers to such unlawful and
13 demeaning treatment; (5) verbally and/or physically assaulting and/or allowing managers and/or co-
14 workers to verbally and/or physically assault Latino employees without suspension, discharge, or other
15 disciplinary measures; (6) refusing to allow Latino employees to take state-mandated rest periods, while
16 allowing the majority of the Korean and/or Korean American employees to take such rest periods; (7)
17 requiring Latino workers to return early from lunch to work to assist other employees and giving them
18 warnings if they did not do so, but not requiring the same from Korean and/or Korean American
19 workers; (8) paying Latino workers a lower hourly wage than Korean and/or Korean American workers
20 for similar work; (9) regularly assigning Korean and/or Korean American workers more hours of
21 employment; (10) providing Latino workers fewer vacation days per year than similarly-situated Korean
22 and/or Korean American employees; (11) providing fewer bonuses to Latino employees than Korean
23 and/or Korean American employees; (12) stripping Latino workers of certain work duties despite their
24 satisfactory performance of such duties in retaliation for filing discrimination charges; (13) changing
25 Latino workers' break schedules and days off, and/or reducing the number of hours they were assigned
26 in retaliation for filing discrimination charges; (14) retaliating against Latino workers by, among other
27 things, cutting their work hours and subjecting them to intimidating surveillance, for collectively taking
28 their state-mandated 10-minute rest periods, which the overwhelming majority of their Korean and/or

1 Korean American co-workers were allowed to take; (15) by allowing defendant managers and/or
2 supervisors to permit co-workers to harass Latino workers; and/or (16) through other harassing,
3 discriminatory, retaliatory, and unlawful conduct.

4 33. Defendants also engaged in a pattern and practice of subjecting Latino applicants for
5 employment to discrimination by refusing to hire them on the basis of their national origin and/or race.

6 Allegations Concerning Plaintiff Tomas Solis Lara

7 34. On or about March, 2000, Plaintiff Lara was hired at Assi Super as a Stocker to work in
8 the Grocery and Deli Departments. He had years of previous experience working in supermarkets most
9 of whose customers were Korean and/or Korean American. His duties consisted of stocking and
10 cleaning the aisles to which he was assigned, rotating the merchandise in those aisles, and preparing
11 merchandise displays for those aisles. He also had the responsibility of ordering merchandise for his
12 aisles, which required extensive knowledge about the shopping habits of the primarily Korean and/or
13 Korean American clientele. Further, he was assigned to stock the warehouse, which required extensive
14 knowledge about the wholesale clientele.

15 35. Throughout his employment at Assi Super, Lara was subjected to differential treatment
16 because of his national origin and/or race in promotions, working conditions, discipline, and wages, and
17 other such treatment. He was also subjected to a hostile work environment. The harassment and
18 discrimination to which Lara was subjected disrupted his emotional tranquility in the workplace and
19 interfered with and undermined his personal sense of well being.

20 36. During all or virtually all of the period during which Lara was employed by Assi Super,
21 there were no Latino managers. All of the managers were Korean and/or Korean American. Lara
22 routinely trained new Korean and/or Korean American employees how to, for example, stock and order
23 merchandise. Some of these Korean and/or Korean American employees were then promoted to
24 manager even though they had less experience and were less qualified than Lara, including, as only one
25 example, Jae Sik Kim. In fact, Lara continued to train these Korean and/or Korean American employees
26 after they became managers. For example, after his promotion, Jae Sik Kim asked Lara to assist him
27 with ordering merchandise. When Lara asked Daniel Rhee why there were no Latino managers, Rhee
28 responded that there could not be any Latino managers because it was a "Korean supermarket." Thus,

1 despite the fact that Lara was more qualified than many of his Korean and/or Korean American co-
 2 workers, many of these Korean and/or Korean American co-workers were promoted while he was not.

3 37. During a portion of the period during which Lara was employed by Assi Super, he
 4 worked in the frozen department, in which area Latino workers were almost exclusively assigned. This
 5 was one of the most difficult areas in which to work in the store because it involved lifting extremely
 6 heavy boxes of frozen products. Despite the sub-freezing temperatures, Assi Super refused to give Lara
 7 and his Latino co-workers adequate suits to protect them from the cold and only gave them one pair of
 8 gloves, which were not effective to protect against the freezing and moist temperatures.

9 38. During all or virtually all of the period during which Lara was employed by Assi Super,
 10 Assi Super owners and/or managers, including his manager Jae Sik Kim, used profanities directed at
 11 him, including but not limited to "sekya" and "pabo" (derogatory Korean words) and "pendejo"
 12 (derogatory Spanish word). Jae Sik Kim also routinely pressured Lara to work faster than his Korean
 13 and/or Korean American co-workers. Additionally, the owners and/or managers of Assi Super failed to
 14 censure, criticize, suspend, discharge, or otherwise discipline, and therefore condoned and ratified, the
 15 acts of Lara's Korean and/or Korean American co-workers, who harassed Lara in various ways,
 16 including but not limited to yelling profanities at Lara, directing Lara to do work despite lacking
 17 supervisorial authority over him, and directing Lara to work faster. Lara's Korean and/or Korean
 18 American co-workers were rarely, if ever, mistreated in these ways.

19 39. Throughout his employment, Lara was required to perform duties in addition to his
 20 regularly assigned duties. Lara was pressured to finish all of these duties within the time allotted for his
 21 regular duties. Korean and/or Korean American workers in similar positions were rarely, if ever, given
 22 duties beyond their regularly assigned duties.

23 40. Lara was also required to carry heavier loads than his Korean and/or Korean American
 24 co-workers. By way of example, in hauling merchandise, Lara used wheeled, flat bed carts, which he
 25 was required to fill to eye level. If Lara did not fill the cart to this level, the owners and/or managers of
 26 Assi Super would reprimand him, order him to fill the cart, and yell "pali pali" ("hurry" in Korean).
 27 Generally, the Korean and/or Korean American workers loaded the carts only halfway and the owners
 28 and/or managers of Assi Super did not reprimand the Korean and/or Korean American workers whose

1 carts were filled only to this level.

2 41. During his employment, defendants often directed Lara to return to work before his state-
3 mandated lunch break was over to assist other employees. By way of example, on or about December
4 23, 2001, Lara took his lunch break around 5:00 P.M. Even though Lara was on his lunch break, a
5 manager named Mr. Lee told Lara to go back to work. The Korean and/or Korean American workers
6 were rarely, if ever, disturbed during their lunch breaks.

7 42. In addition to having his lunch breaks cut short, Lara was not given state-mandated 10-
8 minute rest periods until October or November, 2001. This change was only instituted after the Latino
9 workers collectively began taking their state-mandated breaks despite having been instructed not to take
10 any such breaks. In retaliation for taking the 10-minute breaks, Lara's hours were cut. In contrast, the
11 majority of Korean and/or Korean American workers had been permitted to take breaks at their leisure
12 long before October or November, 2001 and were not reprimanded for doing so.

13 43. According to Assi Super company policy, employees were awarded bonuses for the sales
14 in their departments. Lara, however, did not receive most of these bonuses that Korean and/or Korean
15 American workers in similar positions in his department received. Additionally, Lara had only accrued
16 approximately two days of vacation time after one year of working for Assi Super whereas Korean
17 and/or Korean American workers in similar positions had accrued approximately seven days of vacation
18 time after one year of work.

19 44. On or about January 8, 2002, Lara filed discrimination charges with the Equal
20 Employment Opportunity Commission ("EEOC") against Assi Super.

21 45. In response to his discrimination charges, on September 17, 2002, the EEOC issued a
22 determination stating, "The preponderance of the evidence supports the Charging Party's allegations of
23 harassment and different terms and conditions of employment. The evidence further supports that
24 Hispanics, as a class, were subjected to a hostile work environment due to their national origin.
25 Therefore, I have concluded that the evidence is sufficient to establish a violation of Title VII of the
26 Civil Rights Act of 1964, as amended." Lara was issued a Notice of Right to Sue from the EEOC dated
27 October 28, 2002 and a right-to-sue letter from the Department of Fair Employment and Housing
28 ("DFEH") dated January 8, 2002. (A copy of the charge, the determination letter, and the right-to-sue

1 letters from the EEOC and the DFEH are attached as Exhibit A.)

2 46. Soon after he filed his charges on or about January 8, 2002, Defendants subjected Lara to
3 a pattern of abusive, harassing, and retaliatory conduct, including but not limited to the following
4 conduct.

5 47. After Lara filed discrimination charges, on or about January 15, 2002, despite the fact that
6 Lara was satisfactorily performing his duties of ordering merchandise, Jun Baek Lee stated that Lara, as
7 well as his Latino co-workers, could not perform the duty of ordering merchandise.

8 48. After Lara filed discrimination charges, in order to intimidate Lara, Daniel Rhee would
9 follow Lara around the market, standing near Lara for periods of time and staring at him.

10 49. After Lara filed discrimination charges, Jun Baek Lee forced Lara to work part-time in
11 the frozen food section, which is very demanding physically because of the extremely low temperatures
12 in that section. Jun Baek Lee forced Lara to work in the frozen section despite the fact that Lara told Jun
13 Baek Lee that his doctor told him that he could not work in that section because of his blood pressure.

14 50. After Lara filed discrimination charges, Assi Super owners and/or managers changed
15 Lara's work schedule so that he no longer had Sundays off, instead scheduling him to be off on
16 Mondays. In contrast, a new Korean and/or Korean American worker who had worked only two or three
17 months at Assi Super was given Sunday off, despite the policy that those with greater seniority were to
18 be scheduled for more desirable days off, such as Sunday. When Lara asked to have Sundays off, he was
19 told either to take Mondays off or quit.

20 51. After Lara filed discrimination charges, in addition to changing his work schedule, Assi
21 Super owners and/or managers changed Lara's break schedule. Before Lara filed the EEOC charges, he
22 was allowed to take breaks with his Latino co-workers, but after filing charges Assi Super owners and/or
23 managers changed the Latino employees' schedules so that he was not allowed to take breaks with his
24 Latino co-workers.

25 52. After Lara filed discrimination charges, Lara was also asked to sign a document stating,
26 among other things, that Assi Super could terminate him at any time, which was much stricter than the
27 prior policy which required three warnings before termination.

28 53. After Lara filed discrimination charges, Lara continued to be subjected to abusive verbal

1 reprimands. For example, on or about January 29, 2002, Jae Sik Kim, one of Lara's managers, yelled at
 2 Lara in both Korean and English, including "you son of a bitch." for staying longer than his shift, despite
 3 the fact that Jun Baek Lee had ordered Lara to work late.

4 54. On or about February 11, 2002, and on or about August 6, 2002, Lara filed charges of
 5 discrimination with the EEOC alleging that Defendants engaged in the above-described unlawful
 6 retaliation.

7 55. On October 15, 2002, the EEOC issued a letter of determination, stating: "The
 8 preponderance of the evidence supports the charging Party's claim that he was reassigned and subjected
 9 to different terms and conditions of employment in retaliation for filing the EEOC charge of
 10 discrimination." The EEOC issued a Notice of Right to Sue dated October 28, 2002, and the DFEH
 11 issued a right-to-sue letter dated February 11, 2002. (A copy of the charge, the determination letter, and
 12 the right-to-sue letters from the EEOC and the DFEH are attached as Exhibit B.)

13 Allegations Concerning Plaintiff Benito Gonzalez

14 56. On or about September, 1999, Plaintiff Gonzalez began working at Assi Super as a
 15 Stocker in the Grocery Department. His duties consisted of stocking and cleaning the aisles to which he
 16 was assigned, rotating the merchandise in those aisles, and preparing merchandise displays for those
 17 aisles. He also had the responsibility of ordering merchandise for his aisles, which required extensive
 18 knowledge about the shopping habits of the primarily Korean and/or Korean American clientele.
 19 Further, his duties included stocking the warehouse, which required extensive knowledge about the
 20 store's wholesale clientele.

21 57. During all of his employment at Assi Super, Gonzalez was subjected to different
 22 treatment because of his national origin and/or race in promotions, working conditions, discipline, and
 23 wages, and other such treatment. He was also subjected to a hostile work environment. The harassment
 24 and discrimination to which Gonzalez was subjected disrupted his emotional tranquility in the workplace
 25 and interfered with and undermined his personal sense of well being.

26 58. While Gonzalez was employed at Assi Super, there were no Latino managers. All of the
 27 managers were Korean and/or Korean American. Gonzalez trained many of the Korean and/or Korean
 28 American employees who became managers, including all of his managers except for his first manager.

1 For example, Gonzalez trained Jae Sik Kim who, after being promoted to manager, told Gonzalez to
2 instruct his co-workers about their job responsibilities because Jae Sik Kim did not know what their
3 duties were. Gonzalez also trained a Korean and/or Korean American worker who recently moved from
4 Korea, who was then promoted despite having no prior supermarket experience. The Korean and/or
5 Korean American workers were promoted to manager were usually so promoted within two to six weeks
6 of starting at Assi Super.

7 59. Gonzalez was required to perform duties in addition to his regularly assigned duties.
8 Gonzalez was pressured to finish all of these duties within the time allotted for his regular duties.
9 Korean and/or Korean American workers in similar positions were rarely, if ever, given duties beyond
10 their regularly assigned duties.

11 60. During his employment at Assi Super, Gonzalez was regularly subject to verbal abuse by
12 his managers. They directed profanities at Gonzalez, including "sekya" and "pabo" (derogatory Korean
13 words) and "pendejo".(derogatory Spanish word). Gonzalez's Korean and/or Korean American co-
14 workers were rarely, if ever, mistreated in these ways. Additionally, the owners and/or managers of Assi
15 Super failed to censure, criticize, suspend, discharge, or otherwise discipline, and therefore condoned
16 and ratified, the acts of Gonzalez's Korean and/or Korean American co-workers, who would yell the
17 same profanities at Gonzalez and order him to assist them in their work despite having no supervisory
18 authority over him.

19 61. Throughout his employment, defendants often directed Gonzalez to return to work before
20 his state-mandated lunch break was over to assist other employees. Korean and/or Korean American
21 workers were rarely, if ever, disturbed during their lunch breaks.

22 62. Prior to November, 2001, Gonzalez was not permitted to take his state-mandated 10-
23 minute breaks. He was not allowed to smoke or drink coffee while at work, but his Korean and/or
24 Korean American co-workers could do so at their leisure. In the year 2000, Gonzalez and several of his
25 co-workers attempted to take the rest periods to which they were entitled. The general manager at that
26 time ordered them to return to work. When Gonzalez and the others explained that they were taking the
27 10-minute break to which they were entitled under the law, the general manager responded, "This store
28 is Korean. The rules of the United States do not apply here. If you want to have a break, go home." The

1 general manager then fired Gonzalez and his co-workers. After returning to the store the next day,
2 Gonzalez and his co-workers were rehired. Gonzalez only got rest periods beginning in October or
3 November, 2001. This change was only instituted after the Latino workers collectively began taking their
4 state-mandated breaks despite having been instructed not to take any such breaks. In contrast, the
5 majority of Korean and/or Korean American workers had been permitted to take breaks at their leisure
6 long before October or November, 2001 and were not reprimanded for doing so. In retaliation for taking
7 the 10-minute breaks beginning in October or November, 2001, Gonzalez's breaks were scheduled so
8 that he could not take breaks with his Latino co-workers, whereas his Korean and/or Korean American
9 co-workers' breaks were not so scheduled.

10 63. Throughout his employment, Gonzalez had to use wheeled, flat bed carts to haul
11 merchandise, which he was required to fill to eye level. If Gonzalez did not fill the cart to this level, the
12 owners and/or managers of Assi Super would reprimand him, order him to fill the cart, and yell "pali
13 pali" ("hurry" in Korean). Generally, the Korean and/or Korean American workers loaded the carts only
14 halfway and the owners and/or managers of Assi Super did not reprimand the Korean and/or Korean
15 American workers whose carts were filled only to this level.

16 64. On one occasion, Gonzalez obeyed a front manager's order to take a box filled with
17 merchandise to the manager. The manager complained that Gonzalez had brought him a "disorganized"
18 box, and made disparaging comments to Gonzalez. Gonzalez said that it was not his job to retrieve
19 boxes. Thereafter, the manager destroyed Gonzalez's time card, and said, "No more work for you." The
20 manager then attempted to give Gonzalez a written warning.

21 65. On one occasion, Gonzalez was accosted by an assistant manager, Mr. Lee, for refusing
22 to stock expired products. This led to a confrontation in which Gonzalez was punched and bitten in the
23 face.

24 66. In January, 2002, after several of co-workers had filed discrimination charges with the
25 EEOC, Gonzalez spoke publicly during a press conference about the discrimination to which Latino
26 workers were subjected. In retaliation, on the day of the press conference, the grocery manager, Mr.
27 Kim, sent Gonzalez home early from work. The next day, Gonzalez learned that his work hours had
28 been reduced from between ten and thirteen hours per day to only seven hours per day.

1 67. On or about January 14, 2002, Gonzalez filed discrimination and retaliation charges with
2 the EEOC against Assi Super.

3 68. In response to his discrimination charges, on September 17, 2002, the EEOC issued a
4 determination stating, "The preponderance of the evidence supports the Charging Party's allegations of
5 harassment, different terms and conditions of employment, and retaliation. The evidence further
6 supports that Hispanics, as a class, were subjected to a hostile work environment due to their national
7 origin. Therefore, I have concluded that the evidence is sufficient to establish a violation of Title VII of
8 the Civil Rights Act of 1964, as amended." Gonzalez was issued a Notice of Right to Sue by the EEOC
9 dated October 28, 2002, and issued a right-to-sue letter by the DFEH dated January 14, 2002. (A copy
10 of the charge, the determination letter, and the right-to-sue letters from the EEOC and the DFEH are
11 attached as Exhibit C.)

12 Allegations Concerning Plaintiff Aurelio Vasquez Martinez

13 69. On or about January, 2000, Plaintiff Martinez was hired at Assi Super as a Stocker in the
14 frozen area of the Grocery Department. Martinez also worked in the front area as a Box Boy, and in the
15 Produce Department as a Stocker. He had years of experience working in supermarkets most of whose
16 customers were Korean and/or Korean American. His duties at Assi Super consisted of stocking and
17 cleaning aisles to which he was assigned, rotating the merchandise in those aisles, and stocking and
18 rotating merchandise in the freezer. He also was responsible for ordering merchandise for his aisles,
19 which required extensive knowledge about the shopping habits of the primarily Korean and/or Korean
20 American clientele. Further, he was assigned the duty of stocking the warehouse, which required
21 extensive knowledge about the wholesale clientele.

22 70. During all of his employment at Assi Super, Martinez was subjected to different
23 treatment because of his national origin and/or race in promotions, working conditions, discipline, and
24 wages, and other such treatment. He was also subjected to a hostile work environment. The harassment
25 and discrimination to which Martinez was subjected disrupted his emotional tranquility in the workplace
26 and interfered with and undermined his personal sense of well being.

27 71. During all of the period during which Martinez was employed by Assi Super, there were
28 no Latino supervisors. Martinez routinely trained new Korean and/or Korean American employees how

1 to, for example, stock and order merchandise, who were then promoted to manager even though they had
2 less experience and were less qualified than Martinez. Martinez continued to train Koreans and/or
3 Korean Americans after they became managers. Martinez asked Daniel Rhee why there were no Latino
4 managers. Rhee responded that he could not make a Latino a manager because Assi Super was a
5 "Korean supermarket."

6 72. During a portion of the period during which Martinez was employed by Assi Super, he
7 worked in the frozen department, in which Latinos were almost exclusively assigned. This was one of
8 the most difficult areas in which to work in the store because it involved lifting extremely heavy boxes
9 of frozen products. Despite the sub-freezing temperatures, Assi Super refused to give Martinez and his
10 Latino co-workers adequate suits to protect them from the cold and only gave them one pair of gloves,
11 which were not effective to protect against the freezing and moist temperatures.

12 73. During all or virtually all of the period during which Martinez was employed by Assi
13 Super, Assi Super owners and/or managers, including one of his managers, Moon Won Noh, directed
14 profanities at him including "sekya" and "pabo" (derogatory Korean words) and "pendejo" (derogatory
15 Spanish word). Noh and other supervisors, including but not limited to Jae Sik Kim and Jun Baek Lee,
16 routinely pressured Martinez to work faster, while not so pressuring similarly-situated Korean or Korean
17 American workers. Additionally, the owners and/or managers of Assi Super failed to censure, criticize,
18 suspend, discharge, or otherwise discipline, and therefore condoned and ratified, the acts of Martinez's
19 Korean and/or Korean American co-workers, who yelled profanities at Martinez and/or directed
20 Martinez to do certain work or to work faster despite having no authority to do so. By way of example,
21 on several occasions one Korean and/or Korean American co-worker, Gun Hee Nam, called Martinez a
22 "Mexican Pendejo." Martinez complained to Mr. Lee, the Cashier Manager about Nam's conduct. Lee
23 failed to take any corrective action, instead telling Martinez to return to work. Martinez's Korean and/or
24 Korean American co-workers were rarely, if ever, mistreated in these ways.

25 74. While employed Assi Super, Martinez heard Daniel Rhee make generalizations about
26 Latino workers such as "Latinos don't work well" or "Latinos don't do things right."

27 75. On one occasion, Martinez was assaulted and/or battered by a Korean and/or Korean
28 American co-worker who yelled a number of expletives at Martinez, including but not limited to, "shit

1 man," "fucker," "son of a bitch," and "sekya" (Korean derogatory term). This co-worker also slapped
2 Martinez in his face. This Korean and/or Korean American worker was not disciplined for his actions,
3 despite the fact that management was aware of his actions.

4 76. Throughout his employment, Martinez was required to carry heavier loads than his
5 Korean and/or Korean American co-workers. By way of example, Martinez was required to load flatbed
6 wheeled carts to haul merchandise, which he was required to fill to eye level. If Martinez did not fill the
7 cart to this level, the owners and/or managers of Assi Super would reprimand him and order him to fill
8 the cart. On several occasions Martinez was sent back by Daniel Rhee to load his cart to a higher level.
9 Generally, the Korean and/or Korean American workers loaded the carts only halfway and the owners
10 and/or managers of Assi Super did not reprimand the Korean and/or Korean American workers whose
11 carts were filled only to this level.

12 77. During his employment at Assi Super, Martinez was directed to return to work before his
13 state-mandated lunch break was over in order to assist other employees. As an example, while on his
14 break, Assi Super owners and/or managers ordered Martinez to bag groceries, gather carts, and perform
15 other duties that were not regularly assigned to him. Korean and/or Korean American workers were
16 rarely, if ever, disturbed during their lunch breaks.

17 78. In addition to having his lunch breaks cut short, Martinez was not given state-mandated
18 rest periods until October or November, 2001. This change was only instituted after the Latino workers
19 collectively began taking their state-mandated breaks despite having been instructed not take any such
20 breaks. In contrast, the majority of Korean and/or Korean American workers had been permitted to take
21 breaks at their leisure long before October or November, 2001 and were not reprimanded for doing so.

22 79. Martinez was paid a lower hourly wage than his Korean and/or Korean American co-
23 workers who performed similar jobs. Additionally, Martinez had only accrued approximately two days
24 of vacation time after one year of work for Assi Super whereas similarly-situated Korean and/or Korean
25 American workers accrued approximately seven days of vacation time after one year of work.

26 80. According to Assi Super company policy, employees were awarded bonuses for the sales
27 in their departments. Martinez however, did not receive most of these bonuses that Korean and/or
28 Korean American workers in similar positions in his department received.

1 81. On or about January 7, 2002, Martinez filed discrimination charges with the EEOC
2 against Assi Super.

3 82. In response to his discrimination charges, on September 17, 2002, the EEOC issued a
4 determination stating, "The preponderance of the evidence supports the Charging Party's allegations of
5 harassment and different terms and conditions of employment. The evidence further supports that
6 Hispanics, as a class, were subjected to a hostile work environment due to their national origin.
7 Therefore, I have concluded that the evidence is sufficient to establish a violation of Title VII of the
8 Civil Rights Act of 1964, as amended." Martinez was issued a Notice of Right to Sue by the EEOC
9 dated October 28, 2002, and right-to-sue letter by the DFEH dated January 7, 2002. (A copy of the
10 charge, the determination letter, and the right-to-sue letters from the EEOC and the DFEH are attached
11 as Exhibit D.)

12 83. Soon after filing charges, Defendants subjected Martinez to a pattern of abusive,
13 harassing, and retaliatory conduct, including but not limited to the following conduct.

14 84. After Martinez filed discrimination charges, Martinez's hours were cut from nine hours
15 of work per day to seven hours of work per day.

16 85. After Martinez filed discrimination charges, Martinez's scheduled day off was changed so
17 that he no longer had Monday off. Rather his day off changed weekly, alternating from Tuesday to
18 Wednesday to Thursday for a period of time.

19 Allegations Concerning Plaintiff Martin Alvarez Rodriguez

20 86. On or about July, 2000, Plaintiff Rodriguez was hired at Assi Super as a Kitchen Helper
21 in the Kitchen Department. His duties consisted of cutting various foods to assist the cooks, cleaning the
22 kitchen, and washing dishes.

23 87. During all of his employment at Assi Super, Rodriguez was subjected to different
24 treatment because of his national origin and/or race in promotions, working conditions, discipline, and
25 wages, and other such treatment. He was also subjected to a hostile work environment. The harassment
26 and discrimination to which Rodriguez was subjected disrupted his emotional tranquility in the
27 workplace and interfered with and undermined his personal sense of well being.

28 88. Myung Yun Yoo, the kitchen manager, continuously subjected Rodriguez to demeaning

1 and unfair treatment. Yoo yelled at Rodriguez, including regularly telling him to hurry up and finish his
2 work. She did not subject Korean and/or Korean American workers to this mistreatment.

3 89. One of the Korean and/or Korean American assistant managers in the kitchen, Yang Soon
4 Kwon, nicknamed "Halmoni," routinely yelled at Rodriguez. In contrast, she rarely yelled at Korean
5 and/or Korean American workers. On at least two occasions, Halmoni hit Rodriguez on the back.
6 Rodriguez never saw Halmoni hit any of the Korean and/or Korean American workers. Halmoni also
7 directed derogatory Korean words at Rodriguez. Yoo knew about Halmoni's demeaning and offensive
8 treatment of Rodriguez. Nonetheless, Yoo and other owners and/or managers of Assi Super failed to
9 censure, criticize, suspend, discharge, or otherwise discipline, and therefore condoned and ratified, the
10 acts of Halmoni as well as other Korean and/or Korean American co-workers of Rodriguez who
11 subjected him to such treatment in the workplace.

12 90. Despite their similar duties, Korean and/or Korean American co-workers in similar
13 positions were given extra hours of work, with consequently higher earnings, than were assigned to
14 Rodriguez. Rodriguez was also required to do duties in addition to his regularly assigned duties, while
15 his Korean and/or Korean American co-workers with the same job were not required to do so. These
16 duties included washing dishes and cleaning. Korean and/or Korean American workers in similar
17 positions were rarely, if ever, given duties beyond their regularly assigned duties.

18 91. At one time during his employment, Rodriguez was given a written warning by Jun Baek
19 Lee for working an hour of overtime, even though Yoo, Rodriguez's manager, had asked him to work
20 the additional hour. In contrast, Korean and/or Korean American employees worked hours beyond their
21 regular schedules but did not receive such warnings. The written warning was written in English and
22 never translated for Rodriguez, who is a monolingual Spanish speaker. Rodriguez was told to sign the
23 document. Rodriguez was never informed that he could provide a written response to the warning or
24 that not providing a response was a concession that he agreed with the manager who issued the warning.

25 92. Rodriguez was not given state-mandated 10-minute rest periods until October or
26 November, 2001. This change was only instituted after the Latino workers collectively began taking
27 their state-mandated breaks despite having been instructed not take any such breaks. In contrast, the
28 majority of Korean and/or Korean American workers had been permitted to take breaks at their leisure

1 long before October or November, 2001 and were not reprimanded for doing so. In retaliation for taking
2 the 10-minute break after October or November, 2001, Rodriguez's work hours were reduced by two
3 hours.

4 93. On or about January 8, 2002, Rodriguez filed discrimination charges with the EEOC
5 against Assi Super.

6 94. In response to his discrimination charges, on or about September 17, 2002, the EEOC
7 issued a determination stating, "The preponderance of the evidence supports the Charging Party's
8 allegations of harassment and different terms and conditions of employment. The evidence further
9 supports that Hispanics, as a class, were subjected to a hostile work environment due to their national
10 origin. Therefore, I have concluded that the evidence is sufficient to establish a violation of Title VII of
11 the Civil Rights Act of 1964, as amended." Rodriguez was issued a Notice of Right to Sue by the EEOC
12 dated October 28, 2002, and a right-to-sue letter by the DFEH dated January 8, 2002. (A copy of the
13 charge, the determination letter, and the right-to-sue letters from the EEOC and the DFEH are attached
14 as Exhibit E.)

15 Allegations Concerning Plaintiff Santos Herrera

16 95. On or about November 16, 2001, Plaintiff Herrera was informed by a Latino worker that
17 there were job openings at Assi Super. He filled out an application that day. A Korean and/or Korean
18 American woman who worked in the office told Herrera that there were many openings, and told him to
19 return on or about November 18, 2001. Herrera had thirteen years of experience as a stocker in a retail
20 business.

21 96. Herrera returned on or about November 18, 2001, to meet with the same Korean and/or
22 Korean American woman in the office. At that time, she asked him to complete another application,
23 which was longer than the one he had filled out before. He filled out the application, and the Korean
24 and/or Korean American woman told him to return on or about November 25, 2001 for an interview
25 with Daniel Rhee.

26 97. On or about November 25, 2001, Herrera met with Rhee. Rhee told Herrera that there
27 were many job openings and asked Herrera what work he wanted. Herrera responded that he wanted to
28 be a Stocker. Rhee told him that he would get back to Herrera later.

1 98. On or about December 18, 2001, Rhee told Herrera that he would not offer him a job.
 2 Assi Super never hired Herrera, despite his experience. Upon information and belief, Assi Super hired a
 3 number of Korean and/or Korean American workers during this time period.

4 99. On or about January 8, 2002, Herrera filed discrimination charges with the EEOC against
 5 Assi Super.

6 100. In response to his discrimination charges, on or about September 17, 2002, the EEOC
 7 issued a determination stating, "The preponderance of the evidence supports that Hispanics as a class
 8 were denied hire due to their national origin. In addition, the preponderance of the evidence showed a
 9 record-keeping violation as Respondent failed to keep records as required by statute. Therefore, I have
 10 concluded that the evidence is sufficient to establish a violation of Title VII of the Civil Rights Act of
 11 1964, as amended." Herrera was issued a Notice of Right to Sue by the EEOC dated October 28, 2002,
 12 and a right-to-sue by the DFEH dated January 8, 2002. (A copy of the charge, the determination letter,
 13 and the right-to-sue letters from the EEOC and the DFEH are attached as Exhibit F.)

14 **VII. FACTS OF THE CASE RELATING TO THE WAGE AND HOUR CAUSES OF ACTION**

15 101. Plaintiffs are informed and believe and thereupon allege that, beginning in or around
 16 October, 1998, each Defendant entered into a conspiracy and agreement with other Defendants and/or
 17 subsequently joined said conspiracy and ratified the prior acts and conduct of the Defendants who had
 18 previously entered into said conspiracy. Plaintiffs are currently unaware of when each Defendant joined
 19 said conspiracy, but, on information and belief, allege that all Defendants have knowingly, maliciously,
 20 and wilfully entered into said conspiracy which continues to this day. The purposes of said ongoing
 21 conspiracy include, but are not limited to, misclassifying salaried, non-exempt employees as exempt
 22 from the overtime provisions of the wage and hour laws of California, and refusing to provide state-
 23 mandated rest periods to certain employees, including but not limited to the Latino employees and the
 24 cashiers. All of Defendants' acts and failures to act alleged herein were perpetrated in furtherance of
 25 said ongoing conspiracy.

26 102. Defendants operate, and at all times during the liability period, have operated a
 27 supermarket with various departments, including but not limited to Produce, Korean Deli, Meat, Fish,
 28 and Grocery.

1 103. Defendants have employed salaried employees, such as named Misclassified Plaintiffs
2 Ramos and Park, to perform the following job duties, including but not limited to stocking and cleaning
3 the aisles in the supermarket, rotating merchandise in those aisles, preparing displays, bagging groceries,
4 preparing food, and receiving and unloading merchandise. Plaintiffs are informed and believe, and
5 based thereon allege, that Defendant currently employ approximately forty (40) employees who are
6 salaried who perform such job duties.

7 104. Assi Super employs workers who are paid hourly and receive overtime compensation
8 and, yet, perform the same duties as Misclassified Plaintiffs.

9 105. Misclassified Plaintiffs are covered by IWC Wage Order No. 5-89 (Title 8 Cal. Code of
10 Reg. § 11050). Until January 1, 1998, Section 3 of these Wage Order required employers to pay
11 employees one-and-one-half their normal hourly rate for hours worked in excess of eight (8) per day and
12 in excess of twelve (12) per day and eight (8) on the seventh day worked in a work week. Effective
13 January 1, 1998, Wage Order No. 5-89 was renumbered 5-98 and this Wage Order was amended to
14 exclude the requirement of overtime premiums for hours worked in excess of eight (8) per day and
15 double-time for hours worked in excess of eight on the seventh day in a work week. Effective January 1,
16 2000, and continuing to the present, Wage Order 5-98 is null and void and Wage Order 5-89 is reinstated
17 in compliance with the provisions of Labor Code Section 510 which directs that employers are to pay
18 employees one-and-one-half times their normal hourly rate for hours worked in excess of eight (8) per
19 day and in excess of forty (40) per week, and at twice the normal hourly rate for hours worked in excess
20 of twelve (12) per day and eight (8) on the seventh day worked on a work week.

21 106. Misclassified Plaintiffs are properly classified as "non-exempt" employees. They do not
22 engage in work which is primarily "intellectual," managerial, or "creative," and which "requires the
23 exercise of discretion and independent judgment," within the meaning of those terms as set out in Wage
24 Order No. 5. The job duties of Misclassified Plaintiffs do not entail significant discretionary decision
25 making or supervisory duties; they do not hire, select, supervise, discipline, evaluate, or terminate other
26 employees. Consequently, Misclassified Plaintiffs do not fall within the "administrative, executive or
27 professional" exemptions from the overtime requirements.

28 107. Misclassified Plaintiffs regularly worked in excess of 40 hours per week and/or eight (8)

1 hours per day. During the liability period, Misclassified Plaintiffs were paid a salary on a biweekly
2 basis, but were not paid any additional compensation for their work in excess of forty (40) hours per
3 week and/or eight (8) hours per day. On information and belief, plaintiffs allege that Defendants'
4 practice of not paying overtime compensation to the members of the class that Misclassified Plaintiffs
5 seek to represent is ongoing.

6 108. Defendants are aware of and require the long hours worked by these salaried, non-exempt
7 workers.

8 109. Defendants' denial of compensation for overtime work due to Misclassified Plaintiffs was
9 willful and deliberate.

10 110. Defendants also willfully failed to timely pay the overtime wages due Misclassified
11 Plaintiffs when each such employee left Defendants' employ.

12 111. Defendants have made it difficult to account with precision for the unpaid overtime
13 worked by the Misclassified Plaintiffs during the liability period, because they did not make, keep, and
14 preserve records of all hours worked by such employees as required for non-exempt employees by Labor
15 Code section 1174(d), and the section 7 of the subject Wage Order. Defendants' failure to retain
16 records of hours worked by Misclassified Plaintiffs was willful and deliberate, and designed to serve its
17 policy of unlawfully denying overtime compensation.

18 112. Rest Period Plaintiffs, including but not limited to Latino workers and cashiers, are
19 covered by California Labor Code § 226.7 and Section 12 of IWC Wage Order No. 5, which require paid
20 rest periods at the rate of ten (10) minutes per four (4) hours of work or major fraction thereof.

21 113. Pursuant to Labor Code § 226.7, an employer who fails to provide an employee with a
22 rest period must pay the employee one additional hour of pay at the employee's regular rate of pay for
23 each work day that the rest period is not provided.

24 114. Defendants required Rest Period Plaintiffs to work without rest periods in
25 violation of California Labor Code § 226.7 and Section 12 of IWC Wage Order No. 5. Rest Period
26 Plaintiffs generally worked over eight (8) hours per day, accruing at least two (2) rest periods per day.

27 115. Rest Period Plaintiffs were required to work without taking their state-mandated rest
28 periods despite employees' complaints that they were entitled to such breaks. In the year 2000, named

1 Rest Period Plaintiff Gonzalez, along with several coworkers, attempted to take rest periods to which
2 they were entitled. Defendants willfully refused to allow Rest Period Plaintiffs to take rest breaks.

3 116. In October or November of 2001, Latino workers collectively began taking their state-
4 mandated rest breaks despite being instructed to not to take any such breaks. It was only at this time that
5 the Latino workers finally began to receive their state-mandated rest periods. Defendants willfully
6 continued to refuse to allow other employees to take their state-mandated rest periods.

7 **VIII. CLAIMS FOR RELIEF**

8 **FIRST CAUSE OF ACTION**

9 **Harassment on the Basis of National Origin and/or Race**

10 **[California Government Code § 12940 et seq.]**

11 **(Brought by Discrimination Plaintiffs Against All Defendants)**

12 117. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 116,
13 inclusive, as though fully set forth herein.

14 118. In perpetrating the above-described conduct, Defendants and/or their managers, agents or
15 employees engaged in a pattern and practice of unlawful harassment on the basis of national origin
16 and/or race in violation of California Fair Employment and Housing Act ("FEHA"), including but not
17 limited to Government Code § 12940(j). Defendants and/or their managers, agents or employees
18 harassed Discrimination Plaintiffs on the basis of national origin and/or race, and/or failed to take
19 immediate and appropriate corrective action to prevent such harassment from occurring. The harassment
20 was sufficiently pervasive and severe as to alter the conditions of employment and to create a hostile or
21 abusive working environment.

22 119. As a direct and proximate result of Defendants' unlawful conduct, each Discrimination
23 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of
24 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
25 proven at trial.

26 120. The unlawful conduct of Defendants, and each of them, as alleged herein, was malicious,
27 fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full
28 knowledge of the consequences to each Discrimination Plaintiff as alleged herein, with the intent to

1 harass each Discrimination Plaintiff on the basis of national origin, and/or with a willful, conscious,
 2 wanton, and reckless disregard for each Discrimination Plaintiff's rights and for the deleterious
 3 consequences and hardship resulting to each Discrimination Plaintiff from the conduct of Defendants.
 4 Consequently, each Discrimination Plaintiff is entitled to exemplary and punitive damages in an amount
 5 to be proven.

6 121. Defendants' conduct, as described herein above, constitutes an ongoing and continuous
 7 violation of FEHA, and unless they are restrained from doing so, Defendants will continue to violate
 8 FEHA. Defendants' conduct has injured Discrimination Plaintiffs and will continue to cause irreparable
 9 injury to Discrimination Plaintiffs, who have no adequate remedy at law. Relief by damages alone for
 10 Defendants' continuing violation of Discrimination Plaintiffs' statutory rights would require a
 11 multiplicity of suits. Consequently, Discrimination Plaintiffs are entitled to injunctive relief designed to
 12 place them in the positions they would have held in the absence of Defendants' unlawful conduct and to
 13 bar further harassment against them.

14 SECOND CAUSE OF ACTION

15 Discrimination on the Basis of National Origin and/or Race

16 [California Government Code § 12940 et seq.]

17 (Brought by Discrimination Plaintiffs Against Assi Super)

18 122. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 121,
 19 inclusive, as though fully set forth herein.

20 123. In perpetrating the above-described conduct, Defendants and/or their managers, agents or
 21 employees engaged in a pattern and practice of unlawful discrimination on the basis of national origin
 22 and/or race in violation of FEHA, including but not limited to Government Code § 12940(a).
 23 Defendants and/or their managers, agents or employees discriminated against Discrimination Plaintiffs
 24 in the terms, conditions, and/or privileges of employment on the basis of national origin and/or race,
 25 and/or failed to take immediate and appropriate corrective action to prevent such discrimination from
 26 occurring.

27 124. As a direct and proximate result of Defendants' unlawful conduct, each Discrimination
 28 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of

1 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
2 proven at trial.

3 125. The unlawful conduct of Defendants, and each of them, as alleged herein, was malicious,
4 fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full
5 knowledge of the consequences to each Discrimination Plaintiff as alleged herein, with the intent to
6 discriminate against each Discrimination Plaintiff on the basis of national origin, and/or with a willful,
7 conscious, wanton, and reckless disregard for each Discrimination Plaintiff's rights and for the
8 deleterious consequences and hardship resulting to each Discrimination Plaintiff from the conduct of
9 Defendants. Consequently, each Discrimination Plaintiff is entitled to exemplary and punitive damages
10 in an amount to be proven.

11 126. Defendants' conduct, as described herein above, constitutes an ongoing and continuous
12 violation of FEHA, and unless they are restrained from doing so, Defendants will continue to violate
13 FEHA. Defendants' conduct has injured Discrimination Plaintiffs and will continue to cause irreparable
14 injury to Discrimination Plaintiffs, who have no adequate remedy at law. Relief by damages alone for
15 Defendants' continuing violation of Discrimination Plaintiffs' statutory rights would require a
16 multiplicity of suits. Consequently, Discrimination Plaintiffs are entitled to injunctive relief designed to
17 place them in the positions they would have held in the absence of Defendants' unlawful conduct and to
18 bar further discrimination against them.

19 **THIRD CAUSE OF ACTION**

20 **Retaliation for Opposing Harassment and Discrimination**

21 **[Violation of Cal Gov. Code § 12940(h)]**

22 **(Brought by Discrimination Plaintiffs Against All Defendants)**

23 127. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 126,
24 inclusive as though fully set forth herein.

25 128. Through their conduct as alleged herein, Defendants retaliated against Discrimination
26 Plaintiffs in violation of California Government Code § 12940(h), for, among other things, complaining
27 about and/or resisting and/or making allegations about and/or filing and/or attempting to file claims
28 concerning the harassment and discrimination to which Discrimination Plaintiffs were subjected.

1 129. Discrimination Plaintiffs' managers knew or should have known of the retaliatory
 2 conduct and, in fact, participated in the retaliation. Discrimination Plaintiffs' managers did not take any
 3 measures to prevent the retaliatory conduct from occurring.

4 130. Further, Defendants conspired to retaliate against Discrimination Plaintiffs because of
 5 their opposition to Defendants' discriminatory practices and acted in furtherance of this conspiracy by
 6 subjecting them to different terms and conditions of employment and/or creating an abusive, hostile,
 7 intimidating and threatening work environment, as alleged herein.

8 131. As a direct and proximate result of Defendants' unlawful conduct, each Discrimination
 9 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of
 10 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
 11 proven at trial.

12 132. The unlawful conduct of Defendants, and each of them, as alleged herein, was malicious,
 13 fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full
 14 knowledge of the consequences to Discrimination Plaintiffs as alleged herein, with the intent to
 15 discriminate, harass and/or retaliate against Discrimination Plaintiffs, and/or with a willful, conscious,
 16 wanton, and reckless disregard for Discrimination Plaintiffs' rights and for the deleterious consequences
 17 and cruel and unjust hardship resulting to Discrimination Plaintiffs from the conduct of Defendants.
 18 Consequently, Discrimination Plaintiffs are entitled to exemplary and punitive damages in an amount to
 19 be proven against each Defendant.

20 FOURTH CAUSE OF ACTION

21 Failure to Prevent Harassment and Discrimination

22 [Violation of California Government Code § 12940(k)]

23 (Brought by Discrimination Plaintiffs Against Assi Super)

24 133. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 132,
 25 inclusive, as though fully set forth herein.

26 134. In violation of California Government Code § 12940(k), Defendants and/or their
 27 managers, agents or employees failed to take all reasonable steps necessary to prevent harassment and
 28 discrimination on the basis of national origin and/or race from occurring. In perpetrating the above-

1 described conduct, defendants engaged in a pattern, practice, policy and/or custom of unlawful
 2 harassment and/or discrimination, and retaliation for complaints about harassment and discrimination.
 3 In violation of California Government Code §12940(i), defendants and/or their agents/employees failed
 4 to take all reasonable steps necessary to prevent such discrimination, harassment and/or retaliation from
 5 occurring. These acts and failures to act include but are not limited to the following:

6 (A) Defendants had no policies and/or had ineffective policies, practices, and/or procedures
 7 regarding defendants' obligations to provide a workplace free from discrimination and/or harassment on
 8 the basis of national origin and/or race and retaliation for having made a complaint of regarding such
 9 harassment and/or discrimination;

10 (B) Defendants had no policies and/or had ineffective policies, practices and/or procedures
 11 regarding the handling of complaints of such harassment and/or discrimination, and/or retaliation for
 12 having made such a complaint of harassment, retaliation, and/or discrimination;

13 (C) Defendants failed to adopt and/or enforce reasonable and effective practices, policies
 14 and/or procedures regarding the handling of complaints of harassment, discrimination, and/or retaliation
 15 for having made a complaint of harassment, retaliation, and/or discrimination;

16 (D) Defendants failed to take any and/or took inappropriate action to investigate complaints
 17 by Discrimination Plaintiffs and/or others of harassment, retaliation, and/or discrimination; and/or

18 (E) Defendants failed to implement whatever policies, practices and/or procedures regarding
 19 the foregoing were in existence in an effective manner, or at all.

20 135. During the entire relevant time period, Defendants failed to make an adequate and/or any
 21 response to this pattern and practice and thereby established a policy, custom, practice, and/or usage
 22 which condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in
 23 harassment, retaliation, and/or discrimination on the basis of national origin and/or race.

24 136. Upon information and belief, during the entire relevant time period, defendants failed to
 25 provide any and/or adequate training, education, and/or information to their personnel and most
 26 particularly to management and supervisory personnel with regard to policies and procedures regarding
 27 harassment, discrimination on the basis of national origin and/or race, and/or retaliation for having
 28 complained of harassment, retaliation and/or discrimination.

1 137. As a direct and proximate result of Defendants' unlawful actions, Discrimination
 2 Plaintiffs have suffered and continue to suffer damages, including lost pay and other benefits, loss of
 3 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
 4 proven at trial.

5 138. Defendants' conduct, as described herein above, constitutes an ongoing and continuous
 6 violation of the FEHA, and unless they are restrained from doing so, defendants will continue to violate
 7 said Act. Defendants' conduct has injured plaintiffs and other employees and will continue to cause
 8 irreparable injury to plaintiffs and other employees, who have no adequate remedy at law. Relief by
 9 damages alone for Defendants' continuing violation of these statutory rights would require a multiplicity
 10 of suits. Consequently, Discrimination Plaintiffs are entitled to injunctive relief requiring defendants to
 11 institute effective policies and procedures and to take other actions designed to prevent harassment,
 12 retaliation and discrimination from occurring.

13 FIFTH CAUSE OF ACTION

14 Failure to Hire

15 [Violation of California Government Code § 12940 et seq.]

16 (Brought by Applicant Plaintiff Against Assi Super)

17 139. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 138,
 18 inclusive, as though fully set forth herein.

19 140. In perpetrating the above-described conduct, Defendants and/or their managers, agents or
 20 employees engaged in a pattern and practice of unlawful discrimination on the basis of national origin
 21 and/or race in violation of the FEHA. Government Code § 12940(a). Defendants and/or their managers,
 22 agents or employees failed to hire Applicant Plaintiff on the basis of national origin and/or race, and/or
 23 failed to take immediate and appropriate corrective action to prevent such discrimination from occurring.
 24 Defendants' conduct as alleged herein constitutes unlawful discrimination on the basis of each Applicant
 25 Plaintiff's national origin and/or race.

26 141. As a direct and proximate result of Defendants' unlawful conduct, each Applicant
 27 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of
 28 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be

1 proven at trial.

2 142. The unlawful conduct of Defendants, and each of them, as alleged herein, was malicious,
3 fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full
4 knowledge of the consequences to each Applicant Plaintiff as alleged herein, with the intent to
5 discriminate each Applicant Plaintiff on the basis of national origin and/or race, and/or with a willful,
6 conscious, wanton, and reckless disregard for each Applicant Plaintiff's rights and for the deleterious
7 consequences and hardship resulting to each Applicant Plaintiff from the conduct of Defendants.
8 Consequently, each Applicant Plaintiff is entitled to exemplary and punitive damages in an amount to be
9 proven.

10 143. Defendants' conduct, as described herein above, constitutes an ongoing and continuous
11 violation of FEHA, and unless they are restrained from doing so, Defendants will continue to violate
12 FEHA. Defendants' conduct has injured Applicant Plaintiff and will continue to cause irreparable injury
13 to Applicant Plaintiff, who have no adequate remedy at law. Relief by damages alone for Defendants'
14 continuing violation of Applicant Plaintiff's statutory rights would require a multiplicity of suits.
15 Consequently, Applicant Plaintiff is entitled to injunctive relief designed to place them in the positions
16 they would have held in the absence of Defendants' unlawful conduct and to bar further harassment
17 against them.

18 SIXTH CAUSE OF ACTION

19 Failure to Pay Overtime

20 [Violation of Cal. Labor Code §§ 200-03, 510, 1994; IWC Wage Order No. 5]

21 (Brought by Misclassified Plaintiffs against All Defendants)

22 144. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 143, as if
23 they were set forth again herein.

24 145. At all times relevant herein, IWC Wage Order No. 5 applied to the wages, hours, and
25 working conditions of Misclassified Plaintiffs because they are employed in the "Public Housekeeping
26 Industry." By definition, the Public Housekeeping Industry includes any industry, business, or
27 establishment that provides meals, including but not limited to "establishments which prepare food for
28 consumption on or off the premises."

1 146. At all times relevant herein, Labor Code § 1194(a) provided that an employee who had
2 not been paid overtime compensation could recover the unpaid balance of the full amount of overtime
3 wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

4 147. Under California Labor Code § 510 and IWC Wage Order No. 5, Defendants were and
5 are obligated to compensate Misclassified Plaintiffs at an overtime premium for all hours worked in
6 excess of eight (8) hours in one day and/or in excess of forty (40) hours in a work week. Defendants
7 were required to pay Misclassified Plaintiffs overtime compensation, which is calculated at one and one-
8 half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty
9 (40) hours per week; and, for the first eight (8) hours on the seventh consecutive day of any work week,
10 with double time after twelve (12) hours in any single workday and/or after eight (8) hours on the
11 seventh consecutive day of any work week.

12 148. Sections 201 and 202 of the Labor Code require Defendants to pay its employees
13 all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides
14 that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
15 pay the subject employees' wages until the back wages are paid in full or an action is commenced. The
16 penalty cannot exceed 30 days of wages. Many of the Misclassified Plaintiffs were not paid all wages
17 owed to them at the time of their termination, entitling them to recover waiting time penalties equal to
18 thirty days' pay pursuant to Labor Code § 203.

19 149. Pursuant to Labor Code § 558, if an employer fails to pay all overtime compensation due,
20 an employee may recover \$50.00 from the employer for the initial pay period in which an employee is
21 underpaid in addition to the amount which is sufficient to recover unpaid wages, and \$100.00 per pay
22 period for each subsequent violation.

23 150. Misclassified Plaintiffs were required to work in excess of forty (40) hours per week
24 and/or eight (8) hours in one work day, but were not paid for all such overtime work as required by
25 California law.

26 151. By failing to pay all overtime compensation due, whether through the failure to
27 provide any overtime pay, the denial of premium pay for all overtime hours actually worked, and/or the
28 failure to calculate and pay overtime premiums according to law, and by failing to pay all wages when

1 due to Misclassified Plaintiffs, Defendants willfully, knowingly and/or recklessly violated California
2 wage and hour laws, which require overtime compensation be provided to non-exempt employees such
3 as Misclassified Plaintiffs.

4 152. As a result of Defendants' policy and practice of withholding overtime compensation and
5 failing to pay all wages owed when due, Misclassified Plaintiffs have been damaged in that they have
6 not received wages due to them pursuant to California wage and hour laws.

7 153. Defendants have made it difficult to account with precision for the unpaid overtime
8 worked by the Misclassified Plaintiffs during the liability period, because they did not make, keep, and
9 preserve the recorded hours worked by such employees as required for non-exempt employees by
10 California Labor Code § 1174(d) and applicable wage orders. Defendants' failure to retain records of
11 hours worked by the Misclassified Plaintiffs was willful and deliberate, and designed to serve its policy
12 of unlawfully denying overtime compensation to such persons.

13 154. If Defendants' action were not willful, Defendants knew or reasonably should have
14 known that the conduct described herein would and did proximately result in damage to Misclassified
15 Plaintiffs. At all relevant times, Defendants and/or their managers, agents, and/or employees had the
16 power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to
17 prevent or prohibit said conduct, including to act so as to ensure compliance with state wage and hour
18 laws. Despite said knowledge, power, and duty, Defendants and/or their managers, agents, and/or
19 employees negligently failed to act so as to stop engaging in the conduct described herein and/or to
20 prevent or to prohibit such conduct or to otherwise protect Misclassified Plaintiffs. To the extent that
21 said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and
22 ratified said conduct with the knowledge that each Discrimination Plaintiff's work would not be
23 compensated in compliance with state laws, and with a wanton and reckless disregard for the deleterious
24 consequences to each Misclassified Plaintiffs. As a direct and proximate result of Defendants' unlawful
25 conduct, the Misclassified Plaintiffs have been deprived and continue to be deprived of overtime
26 compensation in amounts to be determined at trial.

27 155. As a result of the unlawful acts of Defendants, the Misclassified Plaintiffs have been
28 deprived and continue to be deprived of overtime compensation in amounts to be determined at trial, and

are entitled to recovery of such amounts, attorneys' fees, costs, statutory penalties, and other compensation pursuant to California Labor Codes §§ 203, 218.5, 226, 558, and 1194.

SEVENTH CAUSE OF ACTION

Failure to Provide Rest Periods

[Violation of California Labor Code § 226.7; IWC Wage Order No. 5]

(Brought By Rest Period Plaintiffs Against All Defendants)

156. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 155, as if they were set forth again herein.

157. Pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5, Defendants were required to authorize and permit employees such as Rest Period Plaintiffs to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest time per for (4) hours or major fraction thereof, with no deduction from wages.

158. Defendants willfully failed and refused to authorize and permit Rest Period Plaintiffs to take rest periods, in violations of California Labor Code § 226.7 and IWC Wage Order No. 5.

159. If Defendants' action were not willful, Defendants knew or reasonably should have known that the conduct described herein would and did proximately result in damage to Rest Period Plaintiffs. At all relevant times, Defendants and/or their managers, agents, and/or employees had the power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or prohibit said conduct, including to act so as to ensure compliance with state wage and hour laws. Despite said knowledge, power, and duty, Defendants and/or their managers, agents, and/or employees negligently failed to act so as to stop engaging in the conduct described herein and/or to prevent or to prohibit such conduct or to otherwise protect Rest Period Plaintiffs. To the extent that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and ratified said conduct with the knowledge that each Rest Period Plaintiffs' work would not be compensated in compliance with state law, and with a wanton and reckless disregard for the deleterious consequences to each Rest Period Plaintiff. As a direct and proximate result of Defendants' unlawful conduct, the Rest Period Plaintiffs have been deprived of paid rest periods and are entitled to compensation and penalties in amounts to be determined at trial.

1 160. As a proximate result of Defendants' violation of California Labor Code § 226.7 and IWC
 2 Wage Order No. 5, Rest Period Plaintiffs have each suffered damages in amounts to be proven at trial
 3 and are entitled to recovery of compensation for the rest period time they worked at overtime rates,
 4 attorneys' fees, costs, statutory penalties, and other compensation.

5 161. Pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5, Defendants are
 6 required to pay each Rest Period Plaintiff a penalty of one hour of pay at the regular rate of
 7 compensation for each Rest Period Plaintiff for each work day that the rest period was not provided.

8 162. Under Labor Code § 558, Rest Period Plaintiffs are entitled to recover from Defendants
 9 \$50.00 for the initial pay period in which each Rest Period Plaintiff was underpaid in addition to the
 10 amount which is sufficient to recover unpaid wages, and \$100.00 per pay period per Rest Period Plaintiff
 11 for each subsequent violation.

12 163. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay
 13 such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back
 14 wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages. Many
 15 of the Rest Period Plaintiffs were not paid all wages owed to them at the time of their termination,
 16 entitling them to recover waiting time penalties equal to thirty days' pay pursuant to Labor Code § 203.

17 EIGHTH CAUSE OF ACTION

18 Breach of Contract

19 (Brought by Misclassified Plaintiffs Against Assi Super)

20 164. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 163, as if
 21 they were set forth again herein.

22 165. At all relevant times herein a contract existed between Misclassified Plaintiffs and
 23 Defendants that was partly oral and/or partly implied. The terms of the contract upon which
 24 Misclassified Plaintiffs relied included the implied agreement that they would be paid wages in
 25 accordance with all applicable laws, rules, and regulations promulgated by the State of California.

26 166. Defendants, by their actions and statements set forth above, have breached the terms,
 27 covenants, conditions and agreements of the above-referenced contract.

28 167. In doing the acts alleged above and below, Defendants have also breached the implied

1 covenant of good faith and fair dealing found in the subject contracts. This breach of the implied
2 covenant of good faith and fair dealing includes the frauds, concealment, and negligent
3 misrepresentations set forth above. To this day Defendants continue their breaches of contracts.

4 168. As a direct and legal result of Defendants' breach of contract, Misclassified Plaintiffs
5 have been damaged in amounts to be proven at trial.

6 169. Misclassified Plaintiffs have been required to bring this action and in doing so will incur
7 reasonable attorney's fees and costs in an amount not yet ascertainable by Misclassified Plaintiffs in an
8 amount to be proven at or following trial of this matter.

9 NINTH CAUSE OF ACTION

10 Fraud

11 (Brought by Misclassified Plaintiffs Against Assi Super)

12 170. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 169, as if
13 they were set forth again herein.

14 171. During the relevant time period, Defendants categorized Misclassified Plaintiffs as
15 exempt from overtime compensation regardless of what specific duties Misclassified Plaintiffs
16 performed. In doing so, Defendants intentionally, and/or with reckless disregard, committed fraud upon
17 Misclassified Plaintiffs by developing and executing a systematic plan by which Defendants, including
18 through their officers, managers, and others, represented to Misclassified Plaintiffs, through practices
19 and policies, that Misclassified Plaintiffs were not entitled to overtime compensation because they were
20 exempt employees. These representations were false, and Defendants knew it. Defendants failed to
21 disclose to Misclassified Plaintiffs that their positions did not meet the legal requirements for exempt
22 status.

23 172. In actual and justifiable reliance on these statements, Misclassified Plaintiffs continued to
24 work overtime without additional compensation.

25 173. As a direct and legal result of Defendants' actions, Misclassified Plaintiffs have been
26 damaged in amounts to be proven at trial.

27 174. Defendants' conduct, pursuant to corporate practices and policies that Defendants knew
28 violated applicable law, was willful, malicious, oppressive, and done with conscious disregard of

SCANNED

1 Misclassified Plaintiffs' rights, entitling Misclassified Plaintiffs to punitive damages.

2 TENTH CAUSE OF ACTION

3 Negligent Misrepresentation

4 (Brought by Misclassified Plaintiffs Against Assi Super)

5 175. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 174, as if
6 they were set forth again herein.

7 176. During the relevant time period, Defendants categorized Misclassified Plaintiffs as
8 exempt from overtime compensation regardless of what specific duties Misclassified Plaintiffs
9 performed. In doing so, Defendants, including through their officers, managers, and others, represented
10 to Misclassified Plaintiffs, through practices and policies, that Misclassified Plaintiffs were not entitled
11 to overtime compensation because they were exempt employees. These representations were false, and
12 Defendants made the representations without any reasonable ground for believing it to be true.
13 Defendants made the representations with the intent to induce Misclassified Plaintiffs to rely on them.
14 Defendants failed to disclose to Misclassified Plaintiffs that their positions did not meet the legal
15 requirements for exempt status.

16 177. Misclassified Plaintiffs were unaware of the falsity of Defendants' representation.

17 178. In actual and justifiable reliance on these statements, Misclassified Plaintiffs continued to
18 work overtime without additional compensation.

19 179. As a direct and legal result of Defendants' actions, Misclassified Plaintiffs have been
20 damaged in amounts to be proven at trial.

21 ELEVENTH CAUSE OF ACTION

22 Conversion

23 (Brought by Misclassified Plaintiffs Against Assi Super)

24 180. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 179, as if
25 they were set forth again herein.

26 181. The Labor Code, and other applicable law, provide that wages become the property of the
27 employee on the next pay day after they are earned. In failing to pay and retaining the overtime wages
28 owed to Misclassified Plaintiffs on and after the next pay day after they were owned, Defendants

1 wrongfully exercised dominion and control over monies otherwise owed to Misclassified Plaintiffs for
 2 overtime. Additionally, Defendants intentionally and/or negligently misrepresented to Misclassified
 3 Plaintiffs their true non-exempt status under the law and, in justifiable reliance, Misclassified Plaintiffs
 4 worked unpaid overtime.

5 182. As a direct and legal result of Defendants' actions, Misclassified Plaintiffs have been
 6 damaged in amounts to be proven at trial.

7 183. Defendants' conduct, in converting the overtime pay owed to Misclassified Plaintiffs,
 8 pursuant to corporate practices and policies that Defendants knew violated applicable law, was willful,
 9 malicious, oppressive, and done with conscious disregard of Misclassified Plaintiffs' rights, entitling
 10 Misclassified Plaintiffs to punitive damages.

11 184. If Defendants' action were not willful, Defendants knew or reasonably should have
 12 known that the conduct described herein would and did proximately result in damage to Misclassified
 13 Plaintiffs. At all relevant times, Defendants and/or their managers, agents, and/or employees had the
 14 power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to
 15 prevent or prohibit said conduct, including to act so as to ensure compliance with state wage and hour
 16 laws. Despite said knowledge, power, and duty, Defendants and/or their managers, agents, and/or
 17 employees negligently failed to act so as to stop engaging in the conduct described herein and/or to
 18 prevent or to prohibit such conduct or to otherwise protect Misclassified Plaintiffs. To the extent that
 19 said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and
 20 ratified said conduct with the knowledge that each Discrimination Plaintiff's work would not be
 21 compensated in compliance with state laws, and with a wanton and reckless disregard for the deleterious
 22 consequences to each Misclassified Plaintiffs. As a direct and proximate result of Defendants' unlawful
 23 conduct, the Misclassified Plaintiffs have been deprived and continue to be deprived of overtime
 24 compensation in amounts to be determined at trial.

25 TWELFTH CAUSE OF ACTION

26 Negligent Appointment, Training and/or Supervision

27 (Brought by All Plaintiff Classes Against All Defendants)

28 185. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 184,

1 inclusive, as though fully set forth herein.

2 186. Defendants have had and continue to have a duty of care under the common law and
3 under state statutory and/or constitutional law to exercise due care in the operation and management of
4 Assi Super, which duty obligates Defendants to avoid and prevent harassment, discrimination and
5 retaliation against Discrimination Plaintiffs as described herein. Such due care requires Defendants to
6 comply with all pertinent statutes, including but not limited to state laws prohibiting harassment on the
7 basis of national origin and race, employment discrimination, and retaliation for complaints about or
8 resistance to harassment or discrimination.

9 187. During all relevant time periods, Defendants, and each of them, knew, or reasonably
10 should have known, that other Defendants had engaged in unlawful and discriminatory practices in
11 positions held before they were given and/or during the time they held the supervisory positions they
12 held with Assi Super, and that they would continue to implement and use those unlawful and
13 discriminatory practices in managing Assi Super and/or supervising its employees. In the alternative,
14 Defendants, and each of them, knew, or reasonably should have known, that other Defendants were
15 ignorant as to the manner in which managers and supervisors must conduct themselves in order to
16 comply with state statutes and laws prohibiting harassment on the basis of national origin and race,
17 employment discrimination, and retaliation for complaints about or resistance to harassment or
18 discrimination.

19 188. Despite said knowledge, Defendants, and each of them, breached their duty of care by
20 negligently, wilfully and/or recklessly placing and/or maintaining said Defendants in positions with the
21 responsibility to manage and supervise employees of Assi Super and to make personnel decisions
22 regarding such employees, without providing said Defendants with any training, guidance, supervision,
23 and/or other direction about how to manage and supervise employees of Assi Super and/or to make
24 personnel decisions regarding such employees, in compliance with any and all state statutes and laws
25 prohibiting harassment on the basis of national origin and race, employment discrimination, and
26 retaliation for complaints about or resistance to harassment or discrimination.

27 189. During all relevant time periods, Defendants, and each of them, knew, or reasonably
28 should have known, that other Defendants and/or other managers and employees individually and/or

1 together in varying combinations, were engaged in the incidents, conduct, acts, and failures to act,
2 described above, and that said incidents, conduct, acts, and failures to act, violated Discrimination
3 Plaintiffs' rights under state statutory and common law.

4 190. At all times material herein, Defendants, and each of them, knew, or reasonably should
5 have known, that the incidents, conduct, acts, and failures to act as set forth herein would and did
6 proximately result in injury and damage to Discrimination Plaintiffs.

7 191. At all times material herein Defendants, and each of them, knew, or in the exercise of
8 reasonable care should have known, that unless Defendants, and each of them, intervened to protect
9 Discrimination Plaintiffs, and to adequately train, supervise, prohibit, control, regulate, discipline, and/or
10 otherwise penalize the conduct, act, and failures to act, of the other Defendants and/or other managers
11 and employees as set forth herein, said conduct, acts, and failures to act would continue, thereby
12 subjecting Discrimination Plaintiffs to personal injury, emotional distress, attendant economic losses,
13 and other injuries.

14 192. Defendants, and each of them, knew, or in the exercise of reasonable care should have
15 known, that unless Defendants, and each of them, intervened to protect Discrimination Plaintiffs, and to
16 adequately train, supervise, prohibit, control, regulate, discipline, and/or otherwise penalize the conduct,
17 acts, and failures to act of other Defendants and/or other managers and employees, Defendants' failure to
18 so protect, supervise, and intervene would have the effect of encouraging, ratifying, condoning,
19 exacerbating, increasing and worsening said conduct, acts, and failures to act.

20 193. At all times material herein, Defendants, and each of them, had the power, ability,
21 authority, and duty to so intervene, train, supervise, prohibit, control, regulate, discipline, and/or penalize
22 the conduct of the other Defendants and/or other managers and employees.

23 194. Despite said knowledge, power, and duty, Defendants and each of them, breached and
24 continue to breach their duty of care by negligently, wilfully and/or recklessly failing to act so as to
25 intervene, supervise, prohibit, control, regulate, discipline, and/or penalize such conduct, acts, and
26 failures to act or otherwise to protect Discrimination Plaintiffs.

27 195. As a direct and proximate result of the failure of Defendants, and each of them, to protect
28 each Discrimination Plaintiff and to adequately train, supervise, prohibit, control, regulate, discipline,

1 and/or otherwise penalize the conduct, acts, and failures to act of the other Defendants and/or other
 2 managers and employees as set forth herein, said conduct, acts, and failures to act were perceived by the
 3 other Defendants and/or other managers or employees as, and in fact, had the effect of, ratifying,
 4 encouraging, condoning, exacerbating, increasing, and/or worsening said conduct, acts, and failures to
 5 act.

6 196. At all times material herein, the failure of the Defendants, and each of them, to protect
 7 Discrimination Plaintiffs, and to adequately train, supervise, prohibit, control, regulate, discipline, and/or
 8 otherwise penalize the conduct, acts, and failures to act of the other Defendants and/or other managers
 9 and employees violated Discrimination Plaintiffs' rights under state statutory and common law.

10 197. As a direct and proximate result of Defendants' unlawful conduct, each Discrimination
 11 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of
 12 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
 13 proven at trial.

14 198. Defendants' conduct as described herein was malicious, fraudulent and/or oppressive, and
 15 done with a conscious disregard for Discrimination Plaintiffs' rights and for the deleterious
 16 consequences of the Defendants' actions. The acts of Defendants and each of them were performed with
 17 the knowledge of an employer's economic power over its employees. Each Defendant authorized,
 18 condoned and/or ratified the unlawful conduct of all the other Defendants named in this action and of
 19 their employees. Consequently, Discrimination Plaintiffs are entitled to an award of punitive damages.

20 THIRTEENTH CAUSE OF ACTION

21 Negligent Infliction of Emotional Distress

22 (Brought by Discrimination Plaintiffs Against All Defendants)

23 199. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 198,
 24 inclusive, as though fully set forth herein.

25 200. As alleged herein, Defendants and/or their managers, agents, and/or employees knew or
 26 reasonably should have known, that the conduct described herein would and did proximately result in
 27 physical and emotional distress to Discrimination Plaintiffs.

28 201. At all relevant times, Defendants and/or their managers, agents, and/or employees had the

1 power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to
2 prevent or prohibit said conduct.

3 202. Despite said knowledge, power, and duty, Defendants and/or their managers, agents,
4 and/or employees negligently failed to act so as to stop engaging in the conduct described herein and/or
5 to prevent or to prohibit such conduct or to otherwise protect Discrimination Plaintiffs. To the extent
6 that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed
7 and ratified said conduct with the knowledge that each Discrimination Plaintiff's emotional and physical
8 distress would thereby increase, and with a wanton and reckless disregard for the deleterious
9 consequences to each Discrimination Plaintiff.

10 203. As a direct and proximate result of Defendants' unlawful conduct, each Discrimination
11 Plaintiff has suffered and continues to suffer damages, including lost pay and other benefits, loss of
12 promotional opportunities, emotional distress, anxiety and stress, and other damages in an amount to be
13 proven at trial.

14 FOURTEENTH CAUSE OF ACTION

15 Assault and/or Battery

16 (California Common Law Tort)

17 (Brought by Plaintiffs Benito Gonzalez, Aurelio Vasquez Martinez,
18 and Martin Alvarez Rodriguez Against Assi Super)

19 204. Plaintiffs restate, reallege and incorporate by reference paragraphs 1 through 203,
20 inclusive, as though fully set forth herein.

21 205. Defendants and/or their managers intentionally, willfully, and knowingly inflicted upon
22 these named Discrimination Plaintiffs unwanted, harmful and/or offensive touchings and/or put these
23 named Discrimination Plaintiffs in apprehension of such offensive and unwanted contact whenever they
24 were in proximity to Defendants.

25 206. As a direct and proximate result of Defendants' unlawful conduct, each named
26 Discrimination Plaintiff has suffered and continues to suffer damages, including lost pay and other
27 benefits, loss of promotional opportunities, emotional distress, anxiety and stress, and other damages in
28 an amount to be proven at trial.

207. Defendants' acts were repeated and intentional. Defendants knew or should have known that their managers and/or their employees inflicted these wrongs and failed to take corrective action. Defendants' conduct as described herein was fraudulent, malicious, and oppressive, and done with a conscious disregard for Discrimination Plaintiffs' rights and for the deleterious consequences of Defendants' actions. Consequently, Discrimination Plaintiffs are entitled to exemplary and punitive damages from Defendants in an amount to be proven.

FIFTEENTH CAUSE OF ACTION

Unfair Business Practices

[Violation of Business and Professions Code § 17200 et seq.]

(Brought by All Plaintiff Classes Against All Defendants)

208. Plaintiffs restate, reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 209, inclusive, as though set forth fully herein.

209. All Plaintiff Classes bring this cause of action on behalf of themselves, the described classes, and members of the general public pursuant to Section 17200 et seq., of the Business and Professions Code. The conduct of Defendants as alleged herein has been and continues to be deleterious to Plaintiffs, the Plaintiff classes, and/or the general public, and Plaintiffs are seeking to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

210. Plaintiffs are informed and believe and, on that basis, allege that Defendants, and each of them, have engaged, continue to engage, and will continue to engage in a pattern or practice of creating and maintaining a hostile work environment on the basis of national origin and/or race, discriminating on the basis of national origin and/or race, and/or retaliating against employees who protest discrimination or harassment, all in violation of the FEHA.

211. Plaintiffs are informed and believe and, on that basis, allege that Assi Super has and continues to fail to pay legally-required overtime wages, to provide itemized statements of hours worked with payments of wages, to pay wages when due, to provide state-mandated rest periods, and other conduct alleged herein, in violation of the California Labor Code and IWC Wage Orders.

212. Defendants' conduct, as described above, constitute ongoing and continuous unfair business practices, and unless they are restrained from so doing, Defendants will continue to engage in

1 said unfair business practices.

2 213. Defendants' unfair business practices have injured Plaintiffs, the Plaintiff classes, and/or
3 the general public, and will continue to cause irreparable injury to them, or some of them, who have no
4 adequate remedy at law. Relief by damages alone for Defendants' continuing unlawful business
5 practices would require a multiplicity of suits.

6
7 **VIII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and for the classes they seek to represent in
9 this action, request the following relief:

10
11 1. That the Court determine that the foregoing claims may be maintained as class actions
12 under section 382 of the Code of Civil Procedure;

13 2. That the Court enter a declaratory judgment that the practices complained of herein are
14 unlawful and violative of the California Fair Employment and Housing Act; the California Labor Code;
15 IWC Wage Order No. 5; California Business and Professions Code § 17200 et seq.; and state common
16 law;

17 3. That the Court permanently enjoin Defendants, their agents, successors, officers,
18 employees, attorneys and those acting in concert with them from engaging in each of the unlawful
19 practices, policies, customs and usages set forth herein, and from continuing any and all other practices
20 shown to be in violation of applicable law;

21 4. That the Court order modification or elimination of practices, policies, customs and
22 usages set forth herein and all other such practices shown to be in violation of applicable law so that
23 Defendants will not engage in such unlawful conduct in the future;

24 5. That the Court immediately assign Discrimination Plaintiffs to the positions they would
25 now be occupying but for the discriminatory and retaliatory practices of Defendants, and adjust the wage
26 rate, salary, bonuses, and benefits for Discrimination Plaintiffs to that level which they would be
27 enjoying but for Defendants' discriminatory and retaliatory practices;

28 6. That Defendants are found to have violated the overtime provisions of the Labor Code

1 and the Wage Orders as to the Misclassified and Rest Period Plaintiffs

2 7. That Defendants are found to have violated the record keeping provisions of state law,

3 8. That Defendants are found to have violated Labor Code sections 201, 202 and 203 for
4 willful failure to pay compensation at the time of termination of employment to the Misclassified and
5 Rest Period Plaintiffs;

6 9. That Defendants are found to have violated Business and Professions Code section 17200
7 by discriminating against, harassing and/or retaliating against members of the Discrimination and
8 Applicant Plaintiff classes, by failing to pay members of the Misclassified Class overtime compensation,
9 by failing to provide paid rest periods as required by the applicable Wage Orders and Labor Code
10 sections, and by failing to keep proper time records;

11 10. That Defendants be enjoined to cease and desist from unfair activities in violation of
12 section 17200 of the Business and Professions Code and that Defendants further be ordered and enjoined
13 to disgorge all ill-gotten benefits and pay restitution to Plaintiffs and the classes they seek to represent,
14 pursuant to Business and Professions Code sections 17200-05;

15 11. That Defendants' violations as described above are found to have been willful;

16 12. Award the Misclassified Plaintiff and the Rest Period Plaintiff Classes damages for the
17 amount of unpaid overtime compensation, including interest thereon, and penalties subject to proof at
18 trial;

19 13. Award Plaintiffs general, special and other compensatory damages, exemplary, and
20 punitive damages, in amounts to be proven at trial;

21 14. Award Plaintiffs statutory penalties;

22 15. Award Plaintiffs pre-judgment and post-judgment interest at applicable legal rates, the
23 costs of suit and reasonable attorneys' fees to the extent they are available; and

24 16. Grant such other and further relief as may be just and proper.

25
26
27 **IX. DEMAND FOR JURY TRIAL**

28 Plaintiffs and all the members of the various classes they seek to represent hereby demand trial of

1 their claims by jury to the extent authorized by law.

2
3 Dated: November 11, 2003

Respectfully submitted,

4 KOREAN IMMIGRANT WORKERS ADVOCATES

5 TRABER & VOORHEES

6
7 By: Bert Voorhees (JS)
8 Bert Voorhees
9 Attorneys for Plaintiffs
10 TOMAS SOLIS LARA, et al.
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