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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DANIEL A. GUTIERREZ, an individual, and
ARTURO NAVARRETE, an individual, and
EMILIANO REYNA, an individual, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

SCHMID INSULATION CONTRACTORS,
INC., a California corporation doing business as
PARAGON SCHMID BUILDING PRODUCTS;
and MASCO CONTRACTOR SERVICES, INC.
a Delaware corporation; and DOES 1 through 10
inclusive,

Defendants.

CASE NUMBER: BC 360357

[Honorable Charles Lee, Dept. 33]

**NOTICE OF FILING OF OPERATIVE
FIRST AMENDED COMPLAINT IN STATE
COURT**

Date: Pending Scheduling Order
Time: Pending Scheduling Order
Dept: 33

345

1 TO DEFENDANTS AND THEIR COUNSEL OF RECORD:

2
3 PLEASE TAKE NOTICE that Plaintiffs Daniel A. Gutierrez, Arturo Navarrete, and Emiliano
4 Reyna, and the putative class ("Plaintiffs") hereby file the operative First Amended Complaint, which
5 was filed in the U.S. District Court, Central District of California, on November 1, 2007. A true and
6 correct copy of the operative First Amended Complaint is attached hereto as Exhibit A. Attached as
7 Exhibit B is a true and correct copy of the U.S. District Court's Order, filed on November 1, 2007,
8 granting Plaintiffs' Motion for Leave to File First Amended Complaint. The Defendants have all filed
9 their Answer and Affirmative Defenses to the First Amended Complaint.

10 *August 5, 2008*
11 DATED: ~~July~~ 2008

SULLIVAN TAKETA LLP

12 *Mark F. Sullivan*
13 By: Mark F. Sullivan
14 Attorneys for Plaintiffs
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EXHIBIT A

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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

DANIEL A. GUTIERREZ, an individual,
 ARTURO NAVARRETE, an individual, and
 EMILIANO REYNA, an individual, as
 individuals and on behalf of all others
 similarly situated,

Plaintiffs,

vs.

SCHMID INSULATION CONTRACTORS,
 INC., a California corporation, doing
 business as PARAGON SCHMID
 BUILDING PRODUCTS; MASCO
 CONTRACTOR SERVICES, INC., a

CASE NO.: BC 360357

[Class Action]

**FIRST AMENDED COMPLAINT FOR
 DAMAGES**

- (1) FAILURE TO PAY FOR ALL HOURS WORKED, INCLUDING ALL TRAVEL AND ADMINISTRATIVE TIME (LAB. CODE §§ 223, 510, 1194, AND I.W.C. WAGE ORDERS);
- (2) FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED (LAB. CODE §§ 221, 223, 1194, 1194.2, 1197, I.W.C. WAGE ORDERS);

Delaware corporation, and DOES 1 through 10, inclusive,

Defendants.

- (3) FAILURE TO PAY TWO TIMES THE MINIMUM WAGE FOR EMPLOYEES REQUIRED TO PROVIDE THEIR OWN EQUIPMENT (LAB. CODE §§ 221, 223, 1194, 1194.2, 1197, I.W.C. WAGE ORDERS);
- (4) UNLAWFUL DEDUCTIONS FROM WAGES (LAB. CODE §§ 221, 2802, I.W.C. WAGE ORDERS);
- (5) FAILURE TO PAY FOR ALL OVERTIME WORKED (LAB. CODE §§ 226.7, 512, I.W.C. WAGE ORDERS);
- (6) FAILURE TO PROVIDE FOR COMPLETELY OFF-DUTY MEAL PERIODS (LAB. CODE §§ 226.7, 512, I.W.C. WAGE ORDERS);
- (7) FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS (LAB. CODE §§ 226, 226.3, 1174, 1174.5);
- (8) FAILURE TO PAY ALL REPORTING TIME PAY (I.W.C. WAGE ORDER 16-2001, Para. 5, "Reporting Time Pay");
- (9) FAILURE TO PAY ALL WAGES DUE WITHIN THE TIME SPECIFIED BY LAW (LAB. CODE § 202, 203); AND
- (10) UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200-17208).

REQUEST FOR JURY TRIAL

Plaintiffs DANIEL A. GUTIERREZ, ARTURO NAVARRETE, and EMILIANO REYNA, on behalf of themselves and all others similarly situated (collectively referred to as "Plaintiffs"), complain and allege as follows:

I. INTRODUCTION

1. This is a class action, under California Code of Civil Procedure § 382, brought on behalf of construction personnel employed by, or on behalf of, Defendants to install building-contractor products, such as gutters, fireplaces, firestopping, weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or blow-in-blankets. The installation personnel have been denied pay for all hours worked, including being denied pay for all time spent traveling to company-assigned work sites in company trucks, time spent setting up, preparing, or measuring at the job sites, for all time spent installing, time spent in reporting hours worked and performing administrative tasks, and time spent loading, maintaining and unloading the company product and equipment. In addition, Plaintiffs and their similarly situated co-workers (putative "Class Members") are required not to record on their time records all of their time spent while at work, under the threat of not being paid. Plaintiffs and the putative Class Members are and were routinely denied pay for all hours worked, denied overtime pay, denied payment of the minimum wage, denied meal breaks, not provided adequate wage statements, and subjected to unlawful deductions (e.g., "negative bonuses") taken from their wages.

2. Pursuant to the California wage and hour laws, Plaintiffs in this action seek unpaid wages for all hours worked, unpaid reporting-time pay (as more particularly described in paragraph 28, below), reimbursement of all necessary work-related costs and expenses, reimbursement of unauthorized wage deductions, interest and penalties on unpaid wages and reporting-time pay to the extent permitted by law, compensation for failure to furnish timely statements accurately showing total hours worked, and reasonable attorneys' fees and costs, under, *inter alia*, Labor Code §§ 201, 202, 203, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 2802, IWC Wage Order 16-2001, and Code of Civil Procedure § 1021.5, on behalf of Plaintiffs and the putative Class Members who are or have been employed in California by SCHMID INSULATION CONTRACTORS, INC., a California corporation doing business as Paragon Schmid Building Products;

WESTERN INSULATION, L.P., a California limited partnership (DOE 1); BUILDER SERVICES GROUP, INC., a Florida corporation formerly known as Masco Contractor Services, Inc. (DOE 2); AMERICAN NATIONAL SERVICES, INC., a California corporation (DOE 3); MASCO CONTRACTOR SERVICES, LLC, a Delaware corporation (DOE 4); MASCO SERVICES GROUP CORP., a Delaware corporation doing business as Masco Contractor Services (DOE 5); and DOES 6 through 10 inclusive (collectively "Defendants"). Plaintiffs and the putative Class Members all suffered unpaid wages as a result of not being paid for all the hours they worked for Defendants as construction installation personnel within the State of California at any time since four years prior to the filing of this Complaint. Plaintiffs and the putative Class Members were also denied minimum reporting-time pay on days when they were sent home without work, and suffered unlawful deductions, including deductions as a result of Defendants' so-called "negative bonus" practice. Plaintiffs, on behalf of themselves and the putative Class Members, also seek restitution of all benefits Defendants have enjoyed from their failure to pay for all hours worked, failure to pay the minimum lawful wage, reporting-time pay and overtime wages, failure to provide accurate statements of hours worked, failure to keep required payroll records; and Plaintiffs and putative Class Members seek injunctive relief under Business and Professions Code §§ 17200-17208.

3. Plaintiffs bring this action on their own behalf, and on behalf of the following class of individuals ("Class Members"):

All persons who are employed or have been employed by Defendants in the construction field to install building products, such as gutters, fireplaces, firestopping, weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or blow-in-blankets ("installers"), in California at any time since October 13, 2002, and continuing while this action is pending.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction as a result of Defendants removal of the action to federal court pursuant to 28 U.S.C. §§ 1332(d), 1441, and 1446, grounded upon the Class Action Fairness Act of 2005 (CAFA). Specifically, Defendants removed the action under 28 U.S.C. § 1332(d) on the grounds that minimal diversity of citizenship exists between one or more members of the class and at least one Defendant, and the amount in controversy exceeds, in the aggregate, five million dollars (\$5,000,000), exclusive of interest and costs, for purposes of CAFA diversity jurisdiction.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because the alleged unlawful failure to pay wage claims and unlawful or unfair business practices alleged below were, and are now being, committed within the jurisdiction of the United States District court for the Central District of California.

III. THE PARTIES

A. Plaintiffs

6. The Named Plaintiffs and the putative Class Members as set forth below all are current or former employees of Defendants who are or were employed within the construction field as installers of building products, such as gutters, fireplaces, firestopping, weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or blow-in-blankets, within California and within the period beginning four years prior to the filing of the Complaint to the present. They are all "employees" as that term is used in the California wage and hour laws, which regulate wages, hours, and working conditions in the State of California.

7. Plaintiff DANIEL A. GUTIERREZ is a resident of Van Nuys, in Los Angeles County, California, and was employed by one or more of the Defendants from approximately January 2006 until approximately October 2006 as a fireplace installer and later as a rain-gutter installer, working out of one or more of the Defendants' warehouse and office facilities located at or near 24955 Kearney Avenue, Valencia, California, in the County of Los Angeles.

1 8. Plaintiff ARTURO NAVARRETE is a resident of Thousand Oaks, in Ventura
2 County, California, and was employed by one or more of the Defendants from approximately
3 June 2006 until September 2006 as an installer working out of one or more of the Defendants'
4 warehouse and office facilities located at or near 24955 Kearney Avenue, Valencia, California,
5 in the County of Los Angeles.

6 9. Plaintiff EMILIANO REYNA is a resident of Ceres, in Stanislaus County,
7 California, and was employed by one or more of the Defendants from approximately April
8 2005 until June 2007 as an installer working out of one or more of the Defendants' facilities
9 located at or near 2400 Rockefeller Drive, Ceres, California, in the County of Stanislaus.

10
11 B. Defendants

12 10. Defendant SCHMID INSULATION CONTRACTORS, INC., is a California
13 corporation doing business in the County of Los Angeles, State of California, under various
14 names, including, without limitation, Paragon Schmid Building Products, Paragon Schmid,
15 Schmid Building Products, Masco, and/or Santa Barbara Building Products.

16 11. Defendant DOE 1, WESTERN INSULATION, L.P., is a California limited
17 partnership doing business in the County of Los Angeles, State of California, under various
18 names, including, without limitation, Western Specialties, Western Insulation, Great Western
19 Painting, North County Acoustics, and/or Masco.

20 12. Defendant DOE 2, BUILDER SERVICES GROUP, INC., a Florida corporation
21 formerly known as Masco Contractor Services, Inc., is a corporation doing business under
22 various names, including, without limitation, InsulPro Industries Inc., Western Insulation
23 Holdings, LLC, Williams Consolidated, Cabinet Supply, Inc. and/or Masco.

24 13. Defendant DOE 3, AMERICAN NATIONAL SERVICES, INC., is a California
25 corporation doing business under various names, including, without limitation, Schmid
26 Insulation, Paragon Schmid, Coast Insulation Contractors, InsulPro Projects, Sacramento
27 Insulation Contractors, Superior Contracting Corporation, and/or Masco.

1 14. Defendant DOE 4, MASCO CONTRACTOR SERVICES, LLC, is a Florida
2 corporation doing business in California under various names, including, without limitation,
3 Masco Contractor Services, Builder Services Corp., Inc., and/or Masco.

4 15. Defendant DOE 5, MASCO SERVICES GROUP CORP., is a Delaware
5 corporation doing business in California under various names, including, without limitation,
6 Masco Contractor Services, LLC, American National Services, Inc., Schmid Insulation
7 Contractors, Paragon Schmid, InsulPro Projects, Coast Insulation, Superior Insulation
8 Contractors, Sacramento Insulation, Builder Services Group, Western Insulation, and/or
9 Masco.

10 16. Defendants operate branch or affiliate offices throughout California. Defendants,
11 and each of them, constitute a "person" as defined in California Labor Code § 18, and an
12 "employer" as that term is used in the California Labor Code regulating wages, hours, and
13 working conditions.

14 17. Each and all of the defendants are subsidiary units of a common parent
15 corporation, Masco Corporation of Taylor, Michigan. These defendants are held out to be, and
16 do business in California as, an integrated entity providing a broad range of building-products
17 installation services in California, including installation of gutters, fireplaces, firestopping,
18 weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or blow-
19 in-blankets. In so doing business in California, these defendants have all adopted and apply
20 the same incomplete time reporting and other unlawful wage practices and policies referenced
21 elsewhere in this Complaint.

22 18. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of Defendants sued herein as DOES 6 through 10, inclusive, are currently unknown
24 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil
25 Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the
26 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
27 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the
28

1 true names and capacities of the Defendants designated hereinafter as DOES when such
2 identities become known.

3 19. Plaintiffs are informed and believe, and based thereon allege, that each
4 Defendant acted in all respects pertinent to this action as the agent of the other Defendants,
5 carried out a joint scheme, business plan, control, or policy in all respects pertinent hereto, and
6 the acts of each Defendant are legally attributable to the other Defendants.

7 IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

8 20. Plaintiffs and the putative Class Members have been routinely denied pay for all
9 hours worked. On information and belief, Defendants have substantially similar policies and
10 procedures regarding payment to Plaintiffs and the putative Class Members, and regarding the
11 installation performed by the Plaintiffs and the putative Class Members.

12 21. For at least four years prior to the filing of the Complaint and continuing
13 hereafter (hereinafter, "Liability Period"), Defendants have had the policy and practice of
14 failing to compensate the Plaintiffs and the putative Class Members for all of the time worked
15 and activities completed for their employer.

16 22. Plaintiffs and the putative Class Members regularly performed work for the
17 benefit of one or more Defendants before they arrive at, or travel to, their first on-site
18 assignment. Plaintiffs and the putative Class Members do not receive all compensation for that
19 time. In the mornings, Defendants require Plaintiffs and the putative Class Members to report
20 for work at a central meeting location and at a time specified by Defendants' local branch.
21 When the installers arrive at the central meeting location at the specified time, they receive
22 their assigned work orders for the day, pick up and load into their company vehicles equipment
23 necessary for the completion of their orders, and route their orders by address. Plaintiffs and
24 putative Class Members then leave the central meeting location and drive in the company
25 vehicles to their first assignment. Often the travel time in the company trucks to the assigned
26 work sites may take an hour or more. Upon instruction by their supervisors, Plaintiffs and the
27 putative Class Members also do not record all of their hours at the work sites. Again, at the
28

1 direction of Defendants' supervisors and management employees, Plaintiffs and putative Class
2 Members park their vehicle, unload their company supplies and equipment, measure and
3 prepare to perform their assigned installation or service. Plaintiffs and the putative Class
4 Members are not paid in full for the time described in this paragraph.

5 23. Defendants require their installers to deduct their compensable time by at least
6 one-half hour each day for "lunch" even when the installers are not completely relieved of their
7 duties for thirty minutes. Due to the pressure and production quotas, installers have to perform
8 more work orders than can typically be performed in a 40-hour workweek, and to meet the
9 Defendants' production quotas, the installers are not completely relieved of their duties during
10 their meal breaks and cannot abandon or leave their work sites.

11 24. Plaintiffs and the putative Class Members are also not paid for all of their time
12 spent in completing the work for the benefit of Defendants. In the mornings, Plaintiffs and the
13 putative Class Members have to meet at a central meeting location or company warehouse
14 where they receive their assignments. The Plaintiffs and putative Class Members are not paid
15 in full for their meeting time and time spent preparing the company trucks for the benefit of
16 Defendants. Plaintiffs and the putative Class Members then are not paid in full for their travel
17 time in the company trucks to the work order sites. Once the Plaintiffs and putative Class
18 Members finish their last work order of the day, Defendants instruct them to drive back to the
19 central meeting location to complete various work-related activities. At the central meeting
20 location, Plaintiffs and the putative Class Members return unused equipment, unload the
21 company vehicles, and complete and submit paperwork for the day's completed orders.
22 Plaintiffs and the putative Class members are not paid for all hours worked, but instead are
23 subject to calculations based on production, without counting all the time spent loading and
24 unloading trucks or performing their required paperwork, and are not compensated for either
25 their travel time back to the central meeting location from their last assignment or their time
26 spent at the central meeting location completing the above-mentioned work on behalf of
27 Defendants.
28

1 25. Plaintiffs and the putative Class Members also regularly spend company
2 preparation time, including preparing, checking, and cleaning their vehicles, for the benefit of
3 Defendants, for which they are not fully compensated.

4 26. Defendants also have had a policy and practice of making improper chargebacks
5 and deductions from earned compensation. For example, Defendants have had a policy and
6 practice of offsetting the earned compensation of Plaintiffs and the putative Class Members
7 through a practice called a "negative bonus," purportedly based on the employees'
8 productivity.

9 27. Plaintiffs and the putative Class Members also receive a paycheck deduction for
10 equipment required to perform Defendants' work, even though Defendants have failed to pay
11 the installers more than two times the California minimum wage rate for each and every hour
12 spent at work for the benefit of Defendants.

13 28. Additionally, Plaintiffs and the putative Class Members were required to report
14 to work even on days when inclement weather or a lack of work resulted in their being sent
15 home. On such days, Plaintiffs and the putative Class Members reasonably expected to work a
16 normal day but received no pay as a result of being sent home by Defendants. Under a
17 California labor regulation (I.W.C. Wage Order 16, paragraph 5, "Reporting Time Pay"),
18 Plaintiffs and the putative Class Members were entitled to be paid in an amount no less than
19 two (2) hours nor more than four (4) hours for having reported to work on each of those days
20 when they reported as directed and were sent home with no pay.

21 29. Plaintiffs and the putative Class Members are also consistently encouraged
22 and/or instructed by their supervisors to underreport the number of hours they work.
23 Defendants fail to pay Plaintiffs and the putative Class Members for the time before, and after,
24 assigned work activities, and even for travel time between job sites. Defendants also demand
25 that the employees sign their timesheets regardless of any dispute or complaint that the
26 timesheets do not accurately reflect the actual time spent working on a particular day.

30. Defendants' unlawful conduct has been widespread, repeated and consistent at its branch areas and warehouses. Defendants' supervisors and managers know or should know that Defendants' employees, including Plaintiffs and the putative Class Members, perform work for Defendants for which Defendants do not compensate them.

31. Defendants knew or should have known that their supervisory and management personnel permit or require Plaintiffs and the putative Class Members to perform work that is for the benefit of Defendants without compensating them for such work.

32. Defendants failed and refused to pay all wages to the Plaintiffs and putative Class Members within the time specified by law.

V. CLASS ALLEGATIONS

33. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The Class that Plaintiffs seek to represent is composed of and defined as follows:

All persons who are employed or have been employed by Defendants in the construction field to install building products, such as gutters, fireplaces, firestopping, weather stripping, cabinets, garage doors, insulation/air filtration, central vacuum, and/or blow-in-blankets ("installers"), in California at any time since October 13, 2002, and continuing while this action is pending.

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

a. Numerosity: The putative Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiffs are informed and believe that

1 Defendants have employed well over 500 persons as installers in California in the four years
2 prior to the filing of the Complaint to the present.

3 b. Commonality: There are questions of law and fact common to the
4 Plaintiffs and the Class that predominate over any questions affecting only individual members
5 of the Class. These common questions of law and fact include, without limitation:

6 i. Whether Class Members are paid for all of their work time,
7 including: their travel time in the company vehicles to, and from, their job sites; all of their
8 hours spent in performing administrative time and preparation time in loading and unloading
9 the company vehicles; all their time preparation time at the daily work sites; and all of the
10 hours spent in performing installations or repairs.

11 ii. Whether Defendants fail to pay overtime to the Class Members for
12 hours worked in excess of eight (8) hours in a workday, or forty (40) hours in a workweek.

13 iii. Whether Defendants have violated California Labor Code §§ 510
14 and 1194, and applicable California Industrial Wage Orders, by failing to pay for all hours
15 worked by Class Members during the Liability Period.

16 iv. Whether Defendants have violated Business and Professions Code
17 § 17200 by failing to pay for all hours worked by Class Members during the Liability Period.

18 v. Whether Defendants have violated California Labor Code
19 §§ 226.7, 512, and 1194, and the applicable California Industrial Wage Orders, by failing to
20 pay for overtime.

21 vi. Whether Defendants have violated California Labor Code
22 §§ 226.7, 512, and 1194, and the applicable California Industrial Wage Orders, by failing to
23 provide all of the required completely off-duty meal periods to Class Members during the
24 Liability Period.

25 vii. Whether the Plaintiffs and Class Members have to provide, or are
26 charged for having to provide, their own equipment to perform the employer's assigned job
27 functions.

1 viii. Whether the Plaintiffs and Class Members have been paid the
2 minimum wage for all hours worked.

3 ix. Whether Defendants have violated California Labor Code §§ 221
4 and/or 2802, and California Industrial Wage Orders, by making unlawful deductions from
5 wages earned by or due to Class Members, or by failing to pay minimum wage for all hours
6 worked, during the Liability Period.

7 x. Whether Defendants have violated Business and Professions Code
8 § 17200 by making unlawful deductions from wages earned by or due to Class Members
9 during the Liability Period.

10 xi. Whether Defendants have violated Labor Code § 226 by failing to
11 timely furnish each Class Member with a statement showing accurate total hours the employee
12 worked each pay period.

13 xii. Whether Defendants have violated Business and Professions Code
14 § 17200 by failing to timely furnish each Class Member with a statement showing accurate
15 total hours the installers worked each pay period.

16 xiii. Whether Defendants maintained timesheets for Plaintiffs and the
17 putative Class Members that fail to reflect the actual number of hours worked.

18 xiv. Whether Defendants violated I.W.C. Wage Order 16, paragraph 5,
19 by failing to pay employees reporting time pay on days when such employees were required to
20 report to work and did, in fact, report to work expecting to work a full day but, instead, were
21 sent home with no pay.

22 xv. Whether Defendants willfully failed to pay Plaintiffs and Putative
23 Class Members all wages due within the time specified by law in violation of Labor Code §§
24 202, and 203.

25 c. Typicality: Plaintiffs' claims are typical of the claims of the Class.
26 Plaintiffs and all putative Class Members sustained injuries and damages arising out of and
27 caused by Defendants' common course of conduct in violation of law as alleged herein.
28

1 d. Adequacy of Representation: Plaintiffs are members of the Class and will
 2 fairly and adequately represent and protect the interests of the putative Class Members.
 3 Counsel who represent the Plaintiffs are competent and experienced in litigating wage and
 4 hour complaints and other employment class actions.

5 e. Superiority of Class Action: A class action is superior to other available
 6 means for the fair and efficient adjudication of this controversy. Individual joinder of all
 7 putative Class Members is not practicable, and questions of law and fact common to the Class
 8 predominate over any questions affecting only individual members of the Class. Each putative
 9 Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal
 10 policies and/or practices as alleged herein. Class action treatment will allow those similarly
 11 situated persons to litigate their claims in the manner that is most efficient and economical for
 12 the parties and the judicial system.

13 14 **FIRST CAUSE OF ACTION**

15 **For Failure to Pay for All Hours Worked in Violation of** 16 **California Labor Code §§ 223, 510, and 1194**

17 *(Against All Defendants)*

18 35. Plaintiffs reallege and incorporate paragraphs 1 through 34 as though fully set
 19 forth herein.

20 36. Plaintiffs allege that Defendants have failed to pay for all hours worked,
 21 including but not limited to, for all travel time in the company vehicles, all time spent
 22 unloading and loading company vehicles, and for time spent doing daily set-up, preparation,
 23 paperwork, and clean-up, as well as overtime spent for the benefit of Defendants.

24 37. Section 2(I) of IWC Wage Order No. 16-2001 defines "Employer" as:

25 "any person as defined in Section 18 of the Labor Code, who directly or
 26 indirectly, or through an agent or any other person, employs or exercises
 27 control over the wages, hours, or working conditions of any person."
 28

1 38. Labor Code § 223 provides that where a contract requires an employer to
2 maintain the designated wage scale, it is unlawful to pay a lower wage while purporting to pay
3 the wage designated by contract.

4 39. Section 2 of MW-2001 requires payment of minimum wages for "all hours
5 worked." Labor Code sections 1194 and 1197 provide that it is unlawful to pay less than the
6 minimum wage fixed by the Wage Orders.

7 40. As of January 1, 2000, Labor Code § 510, Section 3 of IWC Wage Order No. 4-
8 2001 and Section 3 of IWC Wage Order No. 16-2001 have required employers to pay
9 employees one-and-one-half times their normal hourly rate for hours worked in excess of eight
10 per day or in excess of 40 per week, and at twice the normal hourly rate for hours worked in
11 excess of 12 per day and eight on the seventh day worked in a work week.

12 41. Throughout the relevant time period, Section 2(J) of IWC Wage Order No. 16-
13 2001, and Section 2(K) of IWC Wage Order No. 4-2001 provide: "'Hours worked' means the
14 time during which an employee is subject to the control of an employer, and includes all the
15 time the employee is suffered or permitted to work, whether or not required to do so."

16 42. By their failure to pay Plaintiffs and the putative Class Members for all the time
17 they worked, Defendants have violated and continue to violate the provisions of the applicable
18 Wage Orders and Labor Code sections that require proper compensation for all hours worked.

19 43. Defendants have not kept adequate records as required by Labor Code § 1174(d),
20 and therefore do not possess records that are sufficient to determine the hours worked by
21 Plaintiffs and the putative Class Members.

22 44. As a result of Defendants' unlawful acts, Plaintiffs and the putative Class
23 Members have been deprived of wages in amounts to be determined at trial, and are entitled to
24 recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties, under
25 Labor Code §§ 218.5, 218.6, 558, and 1194. Plaintiffs and the putative Class Members are
26 also entitled to liquidated damages under Labor Code § 1194.2.

1 45. Plaintiffs, on behalf of themselves and the putative Class Members, request relief
2 as described below.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure to Pay Minimum Wage for All Hours Worked in Violation of**
6 **California Labor Code §§ 221, 223, 1194, 1197**

7 *(Against All Defendants)*

8 46. Plaintiffs reallege and incorporate paragraphs 1 through 34, and 37 through 44,
9 as though fully set forth herein.

10 47. California Labor Code sections 1194 and 1194.2 provide that any employee
11 receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full
12 amount of this minimum wage compensation in a civil action plus an additional equal amount
13 as liquidated damages, interest thereon, as well as reasonable attorneys' fees and cost of suit.

14 48. Defendants failed to pay Plaintiffs and the putative Class Members the minimum
15 wage for all hours worked as required by the applicable law, including the California Labor
16 Code and IWC Wage Orders.

17 49. Plaintiffs and the putative Class Members further allege that Defendants have
18 failed to pay the minimum wage required under California statute and IWC Wage Orders for
19 all hours worked, including but not limited to, for all travel time in the company vehicles, all
20 time spent in preparation, set-up, and clean-up, for the benefit of Defendants or some of the
21 Defendants.

22 50. As a result of Defendants' unlawful acts, Plaintiffs and the putative Class
23 Members have been deprived of wages in amounts to be determined at trial, and are entitled to
24 recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties, under
25 Labor Code §§ 218.5, 218.6, 558, and 1194.2, 1194.5, and 1197.1.
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1 51. Plaintiffs, on behalf of themselves and the putative Class Members, request relief
2 as described below.

4 THIRD CAUSE OF ACTION

5 For Failure to Pay Two Times the Minimum Wage for Employees 6 Required to Provide Their Own Equipment in Violation of 7 California Labor Code §§ 221, 223, 1194, 1197

8 *(Against All Defendants)*

9 52. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, and
10 47 through 50, as though fully set forth herein.

11 53. California Labor Code sections 1194 and 1194.2 provide that any employee
12 receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full
13 amount of this minimum wage compensation in a civil action plus an additional equal amount
14 as liquidated damages, interest thereon, as well as reasonable attorneys' fees and cost of suit.

15 54. Defendants failed to pay Plaintiffs and the putative Class Members two (2) times
16 the minimum wage required under applicable California law for all hours worked in the
17 situations where the employer has required that the employee provide and maintain hand tools
18 and equipment. For example, under Section 8(B) of IWC Wage Order No. 16-2001, "When
19 the employer requires the use of tools or equipment or they are necessary for the performance
20 of a job, such tools and equipment shall be provided and maintained by the employer, except
21 that an employee whose wages are at least two (2) times the minimum wage may provide and
22 maintain hand tools and equipment customarily required by the particular trade or craft in
23 conformity with Labor Code Section 2802." Similarly, Section 9(B) of the IWC Wage Order
24 No. 4-2001 also prohibits an employer from requiring an employee who makes less than two
25 (2) times the minimum wage to purchase his or her equipment to perform the Defendants' job.

26 55. Regardless of the whether the employees are paid more than two times the
27 minimum wage, Defendants required such employees to provide the tools and equipment to
28

perform the work assigned by Defendants, and if Plaintiffs and the putative Class Members did not have the tools, the Defendants deducted the cost of the tools from the Plaintiffs' and putative Class Members' paychecks. For example, for Rain-Gutter Installers, Defendants required that each rain-gutter installer provide equipment and tools such as screw-guns, work belts, and hammers; and if the installer did not possess a screw-gun, the employer would deduct the cost of the screw-gun from the installer's paycheck.

56. Defendants failed to pay the Plaintiffs and the putative Class Members the minimum wage for all hours worked as required by the applicable law, including the California Labor Code and IWC Wage Orders.

57. As a result of Defendants' unlawful acts, Plaintiffs and the putative Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, costs, and penalties, under Labor Code §§ 218.5, 218.6, 558, and 1194.2, 1194.5, and 1197.1.

58. Plaintiffs, on behalf of themselves and the putative Class Members, request relief as described below.

FOURTH CAUSE OF ACTION

For Unlawful Deductions from Wages in Violation of California Labor Code §§ 221, and 2802

(Against All Defendants)

59. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, and 53 through 57, as though fully set forth herein

60. Defendants have illegally deducted monies from wages earned by Plaintiffs and the putative Class Members, including but not limited to such practices and policy of using a production formula to apply a "negative bonus" deduction, or charging employees for the time spent repairing an installation by another employee or for not meeting the employer's piece-

1 rate quota. Defendants have illegally deducted monies from Plaintiffs' and the putative Class
2 Members' wages in violation of Labor Code §§ 221, 558, and 2802.

3 61. Defendants have charged Plaintiffs and the putative Class Members fees for
4 using supplies and equipment necessary to perform their job duties. Defendants have illegally
5 deducted these costs from Plaintiffs' and the putative Class Members' wages in violation of
6 Labor Code section 221 and/or 2802.

7 62. Defendants failed to pay Plaintiffs and the putative Class Members the minimum
8 wage for all hours worked as required by the applicable law, including the California Labor
9 Code and IWC Wage Orders.

10 63. Defendants failed to pay Plaintiffs and the putative Class Members two (2) times
11 the minimum wage required under applicable California law for each hour worked.
12 Defendants nevertheless required the Plaintiffs and the putative Class Members to provide the
13 tools and equipment to perform the work assigned by Defendants, and if the Plaintiffs and
14 putative Class Members did not have the tools then the Defendants deducted the cost of the
15 tools from the Plaintiffs' and putative Class Members' paychecks. For example, for Rain-
16 Gutter Installers, Defendants required that each rain-gutter installer provide such equipment
17 and tools as screw-guns, work belts, and hammers; and if the installer did not possess a screw-
18 gun then the employer would deduct the cost of the screw-gun from the installer's paycheck.

19 64. Defendants' failure to pay for tool costs and other necessary work-related
20 expenses for Plaintiffs and violates the IWC Wage Orders and the California Labor Code
21 including, but not limited to, Labor Code section 2802, Section 9(B) Wage Order No. 4-2001,
22 and Section 8(B) of Wage Order No. 16-2001.

23 65. Plaintiffs, on behalf of themselves and the putative Class Members, request relief
24 as described below.
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FIFTH CAUSE OF ACTION

**For Failure to Pay for All Overtime Worked in Violation of
California Labor Code §§ 226.7, and 512**

(Against All Defendants)

66. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, and 53 through 64, as though fully set forth herein.

67. Defendants as a practice or policy have routinely required the Plaintiffs and putative Class Members to arrive at the Defendants' warehouse and office at a specified time, e.g., 5:00 a.m. or 6:00 a.m., to receive their work assignments and to prepare their company trucks with the necessary supplies for the assigned job sites. Defendants have a practice or policy requiring that the Plaintiffs and putative Class Members return to the warehouse and office to return the company vehicles and the unused products, and to perform the required paperwork related to Defendants' work orders, in the evening, which usually results in the Plaintiffs and putative Class Members not leaving the company facility until 4:30 p.m. or later. Defendants, however, have failed to pay for all hours worked, including but not limited to, for all travel time in the company vehicles, all time spent unloading and loading company vehicles, and for time spent doing daily set-up, preparation, paperwork, clean-up, as well as overtime spent for the benefit of Defendants.

68. California Labor Code and IWC Wage Orders require that employees working more than eight (8) hours in any workday or more than forty (40) hours in any work week shall be paid one and one-half (1 ½) times the employee's regular rate of pay. In addition, all hours worked in excess of twelve (12) hours worked in any workday or all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek, shall result in two times or double pay for all such hours worked. Defendants have failed to pay for all overtime hours worked by the Plaintiffs and putative Class Members, including the time spent traveling in the company vehicle and performing preparation duties at the company warehouse and

1 assigned job sites. Plaintiffs and the putative Class Members have been deprived of their
 2 rightfully earned overtime compensation as a direct and proximate result of Defendants'
 3 corporate policies and failure and refusal to pay said compensation. Consequently, Plaintiffs
 4 and the putative Class Members are entitled to recover such amounts, plus interest and
 5 penalties thereon, as well as attorneys' fees and costs.

6 69. Plaintiffs and the putative Class Members request relief as described below.

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 8 **SIXTH CAUSE OF ACTION**
 9 **For Unlawful Failure to Provide Completely Off-Duty Meal Periods**
 10 **in Violation of California Labor Code §§ 226.7, and 512**

11 *(Against All Defendants)*

12 70. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47
 13 through 50, and 53 through 68, as though fully set forth herein.

14 71. Plaintiffs and the putative Class Members regularly work in excess of five (5)
 15 and ten (10) hours a day, without being provided meal periods of at least half an hour in which
 16 they were completely relieved of all duties, as required by California wage and hour laws,
 17 including Labor Code §§ 226.7, 512, and Section 11 of Wage Order No. 4-2001.

18 72. Because Defendants failed to provide proper meal periods, they are liable to
 19 Plaintiffs and the putative Class Members for one hour of additional pay at the regular rate of
 20 compensation for each workday that the proper meal periods were not provided, pursuant to
 21 Labor Code § 226.7, 558, and the IWC Wage Order. Defendants have not made such
 22 payments to Plaintiffs and the putative Class Members.

23 73. Plaintiffs and the putative Class Members request relief as described below.

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 25 ///

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SEVENTH CAUSE OF ACTION

For Failure to Furnish Timely and Accurate Wage Statements in
Violation of California Labor Code §§ 226, 226.3, 1174, 1174.5*(Against All Defendants)*

74. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, and 53 through 72, as though fully set forth herein.

75. Labor Code § 226 (a) requires employers either semi-monthly, or at the time of each payment of wages, to furnish each employee with a statement itemizing, *inter alia*, the total hours worked by the employee. Labor Code § 226, including subsection (e), provides that if an employer knowingly and intentionally fails to provide a statement itemizing, *inter alia*, the total hours worked by the employee, then the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000) for each employee. Plaintiffs also allege upon information and belief that Defendants failed to maintain complete and accurate payroll records for each Plaintiff and putative Class Members showing gross wages earned, total hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at the hourly rate.

76. Defendants knowingly and intentionally failed to furnish and continue to knowingly and intentionally fail to furnish each Plaintiff and putative Class Member with timely, itemized statements showing the actual total hours worked by each of them, as required by Labor Code § 226(a). As a result, Defendants are liable to Plaintiffs and the putative Class Members for the amounts provided by Labor Code § 226, 226.3, 558, 1174, and 1174.5.

77. Plaintiffs and the putative Class Members request relief as described below.

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EIGHTH CAUSE OF ACTION
For Failure to Pay for "Reporting Time" (I.W.C. Wage Order 16-2001, Paragraph

5)

(Against All Defendants)

78. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, and 53 through 76, as though fully set forth herein.

79. Plaintiffs and the putative Class Members were required to report to work even on days when inclement weather or a lack of work resulted in their being sent home. On such days, Plaintiffs and the putative Class Members reasonably expected to work at least eight (8) hours but Plaintiffs and the putative Class Members in fact received no pay as a result of being sent home.

80. Under the relevant and controlling California labor regulation (I.W.C. Wage Order 16, paragraph 5, "Reporting Time Pay"), Plaintiffs and putative Class Members were entitled to pay for a half day's work, an amount no less than two (2) hours nor more than four (4) hours for having reported to work on each of those days when they reported as directed and were sent home with no pay.

81. Plaintiffs and the putative Class Members request relief for this denial of reporting time pay as described below.

NINTH CAUSE OF ACTION

For Failure to Pay All Wages Due Within the Time Specified by Law
(Labor Code § 201, 202, 203)

(Against All Defendants)

82. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, and 53 through 80, as though fully set forth herein.

83. California Labor Code §§ 201 and 202 require Defendants to pay the Plaintiffs and putative Class Members all wages due within the time specified by law. California Labor

Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

84. The Plaintiffs and putative Class Members who ceased employment with Defendants are entitled to unpaid compensation, but to date have not received such compensation.

85. More than thirty days have passed since the Plaintiffs and certain putative Class Members left Defendants' employ.

86. As a consequence of Defendants' willful conduct in not paying compensation for all hours worked, the Plaintiffs and putative Class Members whose employment ended during the class period are entitled to thirty days' wages under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

TENTH CAUSE OF ACTION
For Unfair Business Practices in Violation of California Business &
Professions Code §§ 17200-17208

(Against All Defendants)

87. Plaintiffs reallege and incorporate paragraphs 1 through 34, 37 through 44, 47 through 50, 53 through 80, and 82 through 85, as though fully set forth herein.

88. California Business and Professions Code section 17200, *et seq.*, prohibits unfair competition, that is, any unlawful, unfair or fraudulent business practice. A representative action pursuant to California Business & Professions Code §§ 17200, 17203, and 17204 on behalf of the Plaintiffs and general public is appropriate and necessary because as a general business practice, Defendants have not, and are not, paying for all hours worked by the installers, contrary to the laws of the State of California.

89. California Labor Code section 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards to ensure employees are not

1 required to work under substandard and unlawful conditions, and to protect employers who
 2 comply with the law from those who attempt to gain competitive advantage at the expense of
 3 their workers by failing to comply with minimum labor standards.

4 90. Defendants' failure to pay legally required compensation under the Wage Orders
 5 and Labor Code, including but not limited to failing to provide legally required breaks, failing
 6 to keep proper time records under Labor Code § 1174, deducting unlawfully from Plaintiffs'
 7 and the putative Class Members' wages and/or failing to reimburse for necessary expenditures,
 8 in violation of Labor Code §§ 221, 1197, 1199, 2802 and Wage Order No. 16-2001, and failing
 9 to pay for travel and job preparation time in violation of 29 CFR §§ 785.24-25, and requiring
 10 that the installers sign a time record that did not accurately reflect all hours worked with a
 11 purported release of wages owed in violation of Labor Code § 206.5, and failing to timely
 12 furnish installers with statements accurately showing hours worked, and failing to pay all
 13 wages due within the time specified by law, including pursuant to Labor Code §§ 201, 202,
 14 and 203, as alleged above, constitute unlawful and/or unfair activity prohibited by Business
 15 and Professions Code § 17200.

16 91. Defendants have committed acts of unfair competition as defined by Business &
 17 Professions Code section 17200, *et seq.*, by engaging in the unlawful or unfair practices
 18 described in this Complaint, including, but not limited to:

- 19 a. violations of Labor Code § 221;
- 20 b. violations of Labor Code § 223;
- 21 c. violations of Labor Code § 226;
- 22 d. violations of Labor Code § 510;
- 23 e. violations of Labor Code § 1194;
- 24 f. violations of Labor Code § 1197;
- 25 g. violations of Labor Code § 2802; and
- 26 h. violations of IWC Wage Orders.

1 92. As a result of their unlawful and/or unfair acts, Defendants have reaped and
2 continue to reap unfair benefits and illegal profits at the expense of Plaintiffs and the putative
3 Class Members. Defendants should be enjoined from this activity and made to disgorge these
4 ill-gotten gains and restore to Plaintiffs and the putative Class Members the wrongfully
5 withheld wages, related penalties and double the amount of overtime due to compensate class
6 members for delay in receiving wages due, pursuant to Business and Professions Code §§
7 17202 and 17203.

8 93. As a direct and proximate result of the aforementioned acts, Plaintiffs and the
9 putative Class Members have suffered a loss of wages in an amount to be proven at trial. The
10 acts and practices described above constitute an unfair, unlawful or fraudulent business
11 practice, and unfair competition, within the meaning of Business & Professions Code section
12 17200, *et seq.*, because they force Plaintiffs and the putative Class Members to work under
13 substandard conditions, while enabling Defendants to gain an unfair competitive advantage
14 over law-abiding employers and competitors.

15 94. Under California Business and Professions Code §§ 17203 and 17535, Plaintiffs
16 seek on their own behalf, on behalf of the putative Class Members, and on behalf of the
17 general public, preliminary and permanent injunctive relief, including but not limited to an
18 order that Defendants account for, disgorge, and restore to the putative Class Members the
19 unlawfully withheld wages, and for a court order enjoining Defendants from continuing to
20 refuse to pay its installers in accordance with California law and from continuing to engage in
21 the aforesaid unlawful and unfair practices. Injunctive relief is appropriate to avoid a
22 multiplicity of suits for continuing violations of the California Business and Professions Code
23 section 17200.

24 95. Plaintiffs' success in this action will enforce important rights affecting the public
25 interest and in that regard Plaintiffs sue on behalf of the public as well as themselves and
26 others similarly situated. Plaintiffs seek and are entitled to unpaid wages, unpaid overtime,
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1 unpaid work-related expenses, penalties, an injunction, an equitable accounting, and all other
 2 equitable relief due to Defendants' failure to pay all of the wages owed.

3 96. Plaintiffs and the putative Class Members request relief as described below.

4 5 IV. PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs on behalf of themselves and the putative Class Members they
 7 seek to represent in this action request the following relief:

8 A. That the Court determine that this action may be maintained as a class action
 9 under Code of Civil Procedure § 382;

10 B. That the Court find that Defendants have violated Labor Code §§ 510, 1194,
 11 1194.2, 1194.5, 1197, and 1197.1, and Wage Orders MW-2001, and 16-2001 or 4-2001 as to
 12 the Plaintiffs and the putative Class Members for failure to pay for all hours worked and failure
 13 to pay reporting time pay on days when employee class members reported to work as required
 14 by Defendants and were subsequently sent home without pay;

15 C. That the Court find that Defendants have violated the record-keeping provisions
 16 of Labor Code § 1174(d) and the IWC Wage Orders as to Plaintiffs and the putative Class
 17 Members;

18 D. That the Court find that Defendants have failed to pay the minimum wage for all
 19 hours worked by the Plaintiffs and the putative Class Members;

20 E. That the Court find that Defendants have violated Labor Code §§ 226.7, 512 and
 21 IWC Wage Order 16-2001 by failing to afford Plaintiffs and the putative Class Members
 22 overtime and completely off-duty meal periods;

23 F. That the Court find that Defendants have violated IWC Wage Order 16-2001 by
 24 failing to pay Plaintiffs and the putative Class Members reporting time pay for the times when
 25 the Plaintiffs and the putative Class Members were required to report to work but were sent
 26 home without pay;

1 G. That the Court find that Defendants have violated Labor Code §§ 221, and 2802
 2 and IWC Wage Orders by making unlawful deductions from wages earned by or due to the
 3 Plaintiffs and the putative Class Members and/or for failing to reimburse for necessary
 4 expenses;

5 H. That the Court find that Defendants have violated Labor Code § 226 by failing to
 6 timely furnish Plaintiffs and the putative Class Members itemized statements accurately
 7 showing the total hours worked by each of them;

8 I. That the Court find that Defendants have violated Labor Code § 202 by failing to
 9 pay Plaintiffs and the putative Class Members all wages due within the time specified by law;

10 J. That the Court find that Defendants have violated Business and Professions Code
 11 § 17200 by its violations of the Labor Code and Wage Orders as described above;

12 K. That the Court find that Defendants' violations as described have been willful
 13 within the meaning of the California Labor Code and applicable wage and hour laws;

14 L. That the Court award to Plaintiffs and the putative Class Members, damages for
 15 the amount of unpaid compensation and expenses, and unauthorized wage deductions,
 16 including interest thereon, damages for failure to timely furnish statements accurately showing
 17 total hours worked, liquidated damages on unpaid minimum wages, including but not limited
 18 to liquidated damages under Labor Code § 1194.2, and any permitted penalties, including but
 19 not limited to civil penalties under Labor Code § 558, subject to proof at trial;

20 M. That Defendants be ordered and enjoined to pay restitution and penalties to
 21 Plaintiffs and the putative Class Members due to Defendants' unlawful and/or unfair activities,
 22 pursuant to Business and Professions Code §§ 17200-05;

23 N. That Defendants further be enjoined to cease and desist from unlawful and/or
 24 unfair activities in violation of Business and Professions Code § 17200, *et seq.*;

25 O. That Plaintiffs and the putative Class Members be awarded reasonable attorneys'
 26 fees and costs pursuant to Labor Code §§ 218.5, 218.6, 226, 1194, Code of Civil Procedure
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1 § 1021.5, the California Business and Professions Code 17200 *et. seq.* and/or other applicable
2 law; and

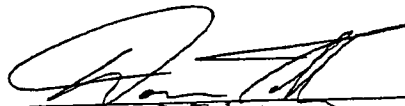
3 P. That the Court award such other and further relief as this Court may deem
4 appropriate.

5
6 **REQUEST FOR JURY TRIAL**

7 Plaintiffs and the Class Members hereby request a jury trial on all causes of action and
8 claims with respect to which they have a right to jury trial.

9
10 DATED: October 10, 2007

Respectfully submitted
SULLIVAN TAKETA LLP

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13 By: Donn S. Taketa
14 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is 31351 Via Colinas, Suite 205, Westlake
5 Village, California 91362.

6 On October 10, 2007, I caused the foregoing document(s) described as **NOTICE OF**
7 **LODGING OF PROPOSED FIRST AMENDED COMPLAINT** to be served on the
8 interested parties in this action by placing a true copy thereof enclosed in a sealed envelope
9 addressed as follows:

10 *See Attached Service List*

11 ☐ BY MAIL AS FOLLOWS: I caused such envelope to be deposited in the mail at
12 Westlake Village, California. The envelope was mailed with postage thereon fully
13 prepaid. I am "readily familiar" with the Firm's practice of collecting and processing
14 correspondence for mailing with the United States Postal Service. It is deposited with
15 the U.S. Postal Service on the same day in the ordinary course of business.

16 ☒ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the
17 offices of the addressee(s).

18 ☐ BY EMAIL: I caused the above-referenced document to be sent to the above address.

19 ☒ BY OVERNIGHT COURIER: I caused the above-referenced document to be delivered
20 to CALIFORNIA OVERNIGHT for delivery to the above address.

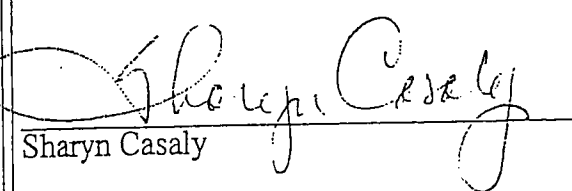
21 ☐ BY FACSIMILE MACHINE: I am "readily familiar" with the Firm's practice of
22 collecting and processing correspondence which is sent via facsimile. It is transmitted to
23 the recipient on the same day in the ordinary course of business.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on October 10, 2007, at Westlake Village, California.

27 (State) I declare under penalty of perjury under the laws of the State of California that
28 the above is true and correct.

29 ☒ (Federal) I declare that I am employed in the office of a member of the bar of this court
30 at whose direction the service was made.

31 
32 Sharyn Casaly

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