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7
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

BC 484951

10 ESTEBAN H. CARMONA, MARCIAL H.
CARMONA, PEDRO CRUZ, and
11 ANSELMO LEYVA, on behalf of
themselves and all others similarly situated,

Case No.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND DAMAGES, FOR;**

12 Plaintiffs,

13 vs.

14 LINCOLN MILLENNIUM CAR WASH,
15 INC., SILVER WASH INC., GOLD
WASH, A CORPORATION, and DOES 1-
16 20, inclusive,

17 Defendants.

1. Failure to Pay Wages;
2. Failure to Pay Reporting Time Wages;
3. Failure to Provide Meal Periods or Pay Wages in Lieu Thereof;
4. Failure to Authorize Rest Periods or Pay Wages in Lieu Thereof;
5. Failure to Pay Wages of Terminated or Resigned Employees;
6. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
7. Failure to Reimburse Work Expenses;
9. Violation of Unfair Competition Law.

DEMAND FOR JURY TRIAL

Judge:
Dept:

1 Plaintiffs Esteban H. Carmona, Marcial H. Carmona, Anselmo Leyva, and Pedro Cruz
2 (collectively "PLAINTIFFS") bring this action against Lincoln Millennium Car Wash, Inc.
3 (doing business as Millennium Car Wash), Silver Wash Inc. (doing business as Santa Monica
4 Car Wash & Detailing), and Gold Wash, a corporation (doing business as Bubble Bee Car Wash)
5 and DOES 1-20 (collectively "DEFENDANTS"), on behalf of themselves and all others
6 similarly situated, and allege upon information and belief, as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has subject matter jurisdiction because the total amount of damages
9 sought exceeds \$25,000 and the relief requested is within the jurisdiction of this Court.

10 2. Venue as to Defendants is proper in the County of Los Angeles, pursuant to Code
11 of Civil Procedure § 395.5. Defendants maintain offices and facilities, transact business, and
12 have agents in Los Angeles County, and Defendants are otherwise within this Court's
13 jurisdiction for purposes of service of process. The unlawful acts alleged have a direct effect on
14 the Representative Plaintiffs and those similarly situated within the State of California and Los
15 Angeles County. Defendants operate services in Los Angeles County and employ numerous
16 Class Members in Los Angeles County. Representative Plaintiffs Esteban H. Carmona, Marcial
17 H. Carmona, Anselmo Leyva, and Pedro Cruz are or were employed by Defendants in Los
18 Angeles County.

19 **CLASS PERIOD**

20 3. The Class Period in this case is May 21, 2008 to the present.

21 **PARTIES**

22 **Plaintiffs**

23 4. Named Plaintiffs Esteban H. Carmona, Marcial H. Carmona, Anselmo Leyva, and
24 Pedro Cruz are residents of Los Angeles County. PLAINTIFFS are or were employed, within
25 the meaning of IWC Wage Order 9-2001(F), by one or more of the DEFENDANTS at various
26 times during the Class Period.

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1 5. PLAINTIFFS and the Class they seek to represent, as DEFENDANTS'
2 employees, were regularly subjected to, or had personal knowledge of the violations described in
3 this Complaint.

4 **Defendants**

5 6. On information and belief, Defendant Lincoln Millennium Car Wash, Inc. (doing
6 business as Millennium Car Wash) has at all relevant times been a California corporation, which
7 conducted and conducts business in Los Angeles County and maintains a business address of
8 2454 Lincoln Blvd, Venice, CA 90291-5041. Defendant Lincoln Millennium Car Wash, Inc.'s
9 agent for service of process is Bijan Damavandi. On information and belief, at all times relevant,
10 Lincoln Millennium Car Wash, Inc. has owned, controlled, or operated a business or
11 establishment that employed persons within the meaning of IWC Wage Order 9-2001 and
12 Section 18 of the Labor Code, and operated as an employer or joint employer of Class members
13 in this case. During relevant times alleged, Defendant Lincoln Millennium Car Wash, Inc.
14 directly employed Plaintiffs Marcial H. Carmona, Esteban H. Carmona, and similarly situated
15 persons as non-exempt employees; jointly employed Plaintiffs Pedro Cruz, Anselmo Leyva, and
16 similarly situated persons as non-exempt employees; and committed the acts complained of here.
17 Millennium Car Wash, Inc. is liable for the violations described in this complaint.

18 7. On information and belief, Defendant Silver Wash Inc. (doing business as Santa
19 Monica Car Wash & Detailing) has at all relevant times been a California corporation, which has
20 conducted and conducts business in Los Angeles County and maintains a business address of
21 2510 Pico Blvd, Santa Monica, CA 90405-1829. Defendant Silver Wash Inc.'s agent for service
22 of process is Edna Damavandi. On information and belief, at all times relevant, Defendant Silver
23 Wash Inc. has owned, controlled, or operated a business or establishment that employed persons
24 within the meaning of IWC Wage Order 9-2001 and Section 18 of the Labor Code, and operated
25 as an employer or joint employer of Class members in this case. During relevant times alleged,
26 Defendant Silver Wash Inc. directly employed Plaintiff Pedro Cruz and similarly situated
27 persons as non-exempt employees; jointly employed Plaintiffs Marcial H. Carmona, Esteban H.

1 Carmona, Anselmo Leyva, and similarly situated persons as non-exempt employees; and
2 committed the acts complained of here. Defendant Silver Wash Inc. is liable for the violations
3 described in this complaint.

4 8. On information and belief, Defendant Gold Wash, a corporation (doing business
5 as Bubble Bee Car Wash) has at all relevant times been a California corporation, which
6 conducted and conducts business in Los Angeles County and maintains a business address of
7 2711 Del Amo Blvd, Lakewood, CA 90712-2901. Defendant Gold Wash's agent for service of
8 process is Kambiz Damavandi. On information and belief, at all times relevant Defendant Gold
9 Wash has owned, controlled, or operated a business or establishment that employed persons
10 within the meaning of IWC Wage Order 9-2001 and Section 18 of the Labor Code, and operated
11 as an employer or joint employer of Class members in this case. During all relevant times
12 alleged, Defendant Gold Wash directly employed Plaintiff Anselmo Leyva and similarly situated
13 persons as non-exempt employees; jointly employed Marcial H. Carmona, Esteban H. Carmona,
14 Pedro Cruz, and similarly situated persons as non-exempt employees; and committed the acts
15 complained of here. Defendant Gold Wash is liable for the violations described in this complaint.

16 9. PLAINTIFFS are informed and believe, and consequently allege, that each
17 Defendant acted in all respects pertinent to this action as the agent of the other DEFENDANTS,
18 carried out a joint scheme, business plan, or policy in all pertinent respects, and the acts of each
19 Defendant are legally attributable to the other DEFENDANTS. PLAINTIFFS are informed and
20 believe that DEFENDANTS jointly control employee compensation and other labor policies
21 such as employee reporting, break, and timekeeping policies, and monitor the implementation of
22 those policies.

23 FACTUAL BACKGROUND

24 10. This is a Class Action under California Code of Civil Procedure § 382 to
25 vindicate rights afforded the California Labor Code and California Business and Professions
26 Code § 17200 *et seq.* This action is brought on behalf of PLAINTIFFS and members of the
27 Plaintiff Class comprising all non-exempt employees employed, or formerly employed, by each

1 of the DEFENDANTS within the State of California. The action seeks recovery for wages,
2 compensation, and other relief due and owing to PLAINTIFFS and the Plaintiff Class members
3 under California law for the maximum period allowed to the present (the "Class Period" as
4 defined above), as set out below.

5 11. The claims of this lawsuit result from a pattern of misconduct and wrongdoing
6 that has characterized the labor system utilized at Millennium Car Wash, Santa Monica Car
7 Wash & Detailing, and Bubble Bee Car Wash by DEFENDANTS, where unpaid and improperly
8 paid labor, as alleged here, are commonplace and regular practices. The practices of
9 DEFENDANTS are uniform, or nearly uniform among each Defendant. The following
10 paragraphs detail specific violations of law comprising the wage-related claims.

11 12. At all relevant times DEFENDANTS maintained and enforced against employees
12 the following unlawful practices and policies, in violation of California state wage and hour
13 laws:

14 (a) forcing employees to work pre-shift and post-shift "off the clock" time
15 without compensation;

16 (b) forcing employees to work a second shift without compensation and
17 without split shift pay;

18 (c) failing to provide overtime pay for employees who are employed more
19 than eight (8) hours in any workday or more than (40) hours in the workweek;

20 (d) forcing employees to purchase tools and/or uniforms from the employer or
21 otherwise supply their own tools and equipment without reimbursement;

22 (e) failing to pay minimum wages;

23 (f) failing to pay double minimum wage to employees who provide or are
24 required to purchase their own tools;

25 (g) failing to authorize and permit proper rest periods of at least (10) minutes
26 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1)

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1 hour of pay at the employee's regular rate of compensation for each workday that the rest period
2 is not provided, as required by California state wage and hour laws;

3 (h) requiring non-exempt employees to work at least five (5) hours without a
4 meal period and failing to pay such employees one (1) hour of pay at the employee's regular rate
5 of compensation for each workday that the meal period is not provided;

6 (i) requiring employees to report to work and if an employee did report for
7 work, but was not put to work or was furnished with less than half the employee's usual or
8 scheduled day's work, paying the employees less than half the usual or scheduled day's work at
9 the employee's regular rate of pay and/or less than the legal minimum;

10 (j) failing to provide employees with accurate itemized wage statements; and

11 (k) failing to maintain accurate time-keeping records.

12 13. PLAINTIFFS, on behalf of themselves and all other non-exempt employees
13 employed by, or formerly employed by DEFENDANTS (i.e., "Class Members"), bring this
14 action under California Labor Code §§ 201, 202, 203, 204, 214, 216, 218, 218.6, 221, 226,
15 226.7, 512, 1174, 1185, 1194, 1194.2, 1197, 2052, 2802, the Wage Orders, and Business &
16 Professions Code §§ 17200 *et seq.* seeking unpaid wages, double minimum wages, unpaid rest
17 and meal period compensation, split shift pay, indemnification for employee expenses, statutory
18 penalties, liquidated damages, declaratory, injunctive and other equitable relief, reasonable
19 attorneys' fees and costs of suit, injunctive relief, declaratory relief, restitution, and disgorgement
20 of all profits or benefits retained by DEFENDANTS as a result of their failure to comply with
21 the above laws.

22 14. On information and belief, DEFENDANTS were on notice of the improprieties
23 alleged by their employees, PLAINTIFFS and the Class Members they seek to represent, and
24 intentionally refused to rectify their unlawful policies.

25 15. At all relevant times, DEFENDANTS' requirement that non-exempt employees
26 work "off the clock" and without compensation, work through meal and rest periods without
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1 paying legal compensation for failure to provide rest or meal periods, in addition to the other
2 violations alleged above, was also willful and deliberate.

3 16. DEFENDANTS have made it difficult to account with precision for the
4 unlawfully withheld wages due DEFENDANTS' non-exempt employees, including
5 PLAINTIFFS, during all relevant times, because they have not implemented a record-keeping
6 method to record all hours worked and wages earned by their employees as required for non-
7 exempt employees by California Labor Code §§ 226 and 1174(d), and the Wage Order.

8 17. DEFENDANTS have failed to comply with California Labor Code § 226(a) by
9 not itemizing in wage statements all wages earned and accurately reporting total hours worked
10 by PLAINTIFFS and the Class Members of the proposed class. PLAINTIFFS and Class
11 Members are therefore entitled to statutory penalties not to exceed \$4,000 for each employee
12 under Labor Code § 226(e).

13 CLASS ACTION ALLEGATIONS

14 18. PLAINTIFFS bring this action on behalf of themselves and all others similarly
15 situated as a class action under Cal. Code Civ. Proc. § 382. PLAINTIFFS seek to represent the
16 following Class, composed of, and defined, as follows:

17 All persons employed directly or jointly by Lincoln Millennium Car
18 Wash, Inc., Silver Wash Inc., and Gold Wash, a Corporation in
19 California as non-exempt hourly employees at any time during the
period of May 21, 2008 to the present.

20 19. PLAINTIFFS may amend the above class definitions as permitted or required by
21 this Court. This action has been brought and may properly be maintained as a class action under
22 the provisions of California Code of Civil Procedure § 382 because all the prerequisites for class
23 treatment are met.

24 Ascertainability and Numerosity

25 20. The potential members of the above class as defined are so numerous that joinder
26 of all the members of the Class is impracticable. While the precise number of members of each
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1 class has not been determined at this time, PLAINTIFFS are informed and believe that the class
2 consists of more than one hundred non-exempt employees or former employees.

3 21. On information and belief, PLAINTIFFS allege the DEFENDANTS' employment
4 records will provide information as to the number and location of the members of the Class that
5 will allow the class to be ascertained.

6 22. Joinder of all members of the proposed Class is not practicable.

7 **Commonality**

8 23. There are questions of law and fact common to the Class predominating over any
9 questions affecting only individual Class Members. These common questions of law and fact
10 include, without limitation:

11 (a) Whether DEFENDANTS violated California Labor Code and applicable
12 wage orders by not compensating non-exempt employees for all hours worked;

13 (b) Whether DEFENDANTS violated California Labor Code and applicable
14 wage orders by not providing overtime pay for employees who are employed more than eight (8)
15 hours in any workday or more than (40) hours in the workweek;

16 (c) Whether DEFENDANTS violated California Labor Code and applicable
17 wage orders by compensating non-exempt employees at hourly wage rates below the minimum
18 wage rate;

19 (d) Whether DEFENDANTS violated California Labor Code and applicable
20 wage orders by requiring non-exempt employees to report to work but not putting them to work
21 or furnishing them with less than half their usual or scheduled day's work, paying them less than
22 half the usual or scheduled day's work at their regular rate of pay;

23 (e) Whether DEFENDANTS violated California Labor Code and applicable
24 wage orders by failing to provide daily rest periods to non-exempt employees for every four
25 hours or major fraction thereof worked and failing to compensate employees one hour's wages in
26 lieu of rest periods;

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1 (f) Whether DEFENDANTS violated California Labor Code and applicable
2 wage orders by failing to provide timely meal periods to non-exempt employees on days they
3 worked in excess of five hours, failing to relieve employees of all duty for 30-minute meal
4 periods, and failing to compensate employees one hour's wages in lieu of meal periods;

5 (g) Whether DEFENDANTS violated the rest and meal periods laws by
6 discouraging the taking of rest and meal breaks;

7 (h) Whether DEFENDANTS violated California Labor Code and applicable
8 wage orders by failing to, among other violations, maintain accurate records of employees'
9 earned wages and work periods, itemize in wage statements all hours worked and wages earned,
10 and accurately maintain records pertaining to PLAINTIFFS and the Class they seek to represent;

11 (i) Whether DEFENDANTS violated California Labor Code and applicable
12 wage orders by failing to pay all earned wages and/or premium wages due and owing at the time
13 that any Class member's employment with DEFENDANTS terminated;

14 (j) Whether DEFENDANTS violated California Labor Code and applicable
15 wage orders by forcing employees to purchase tools and/or uniforms from the employer or
16 otherwise supply their own tools and equipment without reimbursement;

17 (k) Whether DEFENDANTS violated California Labor Code and applicable
18 wage orders by failing to pay double minimum wage to employees who provide or are required
19 to purchase their own tools;

20 (l) Whether DEFENDANTS violated § 17200 *et seq.* of the California
21 Business and Professions Code by unlawfully deducting wages, failing to indemnify employees,
22 or failing to pay wages to non-exempt employees and converting same to DEFENDANTS' own
23 use; unlawfully requiring employees to work "off the clock" without compensation and
24 converting same to DEFENDANTS' own use; unlawfully failing to provide overtime pay for
25 employees who are employed more that eight (8) hours in any workday or more than (40) hours
26 in the workweek and converting same to DEFENDANTS' own use; unlawfully requiring non-
27 exempt employees to work at hourly wage rates below the minimum wage and converting same

1 to DEFENDANTS' own use; unlawfully requiring non-exempt employees to report to work and
2 when they did report for work, but were not put to work or were furnished less than half their
3 usual or scheduled day's work, paying them less than half the usual or scheduled day's work at
4 their regular rate of pay and converting same to DEFENDANTS' own use; unlawfully requiring
5 employees to work split shifts without paying non-exempt employees one hour's pay at the
6 minimum wage for each workday they work a split shift and converting same to
7 DEFENDANTS' own use; failing to provide rest and meal periods without compensating non-
8 exempt employees one hour's pay for each instance such periods were not provided and
9 converting same to DEFENDANTS' own use; failing to pay wages for hours worked or rest and
10 meal periods due and owing at the time a Class Member's employment with DEFENDANTS
11 terminated; failing to keep accurate records causing injury to employees; forcing employees to
12 purchase tools and/or uniforms from the employer or otherwise supply their own tools and
13 equipment without reimbursement and converting same to DEFENDANTS' own use; and failing
14 to pay double minimum wage to employees who provide or are required to purchase their own
15 tools and converting same to DEFENDANTS' own use;

16 (m) Whether DEFENDANTS violated § 17200 *et seq.* of the Business and
17 Professions Code by violating the public policy underlying the California Labor Code and
18 applicable wage orders;

19 (n) Whether PLAINTIFFS and the Class Members are entitled to declaratory,
20 injunctive and other equitable relief under Business and Professions Code § 17200, *et seq.*;

21 (o) Whether PLAINTIFFS and the Class Members are entitled to damages,
22 restitution, statutory penalties, declaratory, injunctive and declaratory relief, attorney's fees and
23 costs, and other relief under the California Labor Code, the applicable wage orders, and Business
24 and Professions Code § 17200, *et seq.*;

25 (p) Whether PLAINTIFFS, the current and former employees are entitled to
26 penalties for the Labor Code and Wage Order violations alleged herein.

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1 **Typicality**

2 24. The claims of the named PLAINTIFFS are typical of the claims of the Class.
3 PLAINTIFFS and all members of the Class sustained injuries and damages arising out of and
4 caused by DEFENDANTS' common course of conduct in violation of California laws,
5 regulations, and statutes as alleged here.

6 **Adequacy of Representation**

7 25. PLAINTIFFS will fairly and adequately represent and protect the interests of the
8 members of the Class. Counsel who represent PLAINTIFFS are competent and experienced in
9 litigating large class actions.

10 **Superiority of Class Action**

11 26. A class action is superior to other available means for the fair and efficient
12 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
13 questions of law and fact common to the Class predominate over any questions affecting only
14 individual members of the Class. Each member of the proposed Class has been damaged and is
15 entitled to recovery by reason of DEFENDANTS' unlawful policy and/or practice of failing to
16 compensate Class Members for all wages earned and engaging in the unlawful practices
17 complained of, and denying Class Members rest and meal periods without legal compensation.

18 27. No other litigation concerning this controversy has been commenced by or against
19 class members.

20 28. Class action treatment will allow those similarly situated persons to litigate their
21 claims in the manner that is most efficient and economical for the parties and the judicial system.
22 It is unlikely that individual class members have any interest in individually controlling separate
23 actions in this case. Class members' lack of knowledge of the legal system and limited
24 economic resources would deprive most class members of the practical opportunity to pursue
25 their claims if this class action is not certified.

26 29. PLAINTIFFS are unaware of any difficulties that are likely to be encountered in
27 the management of this action that would preclude its maintenance as a class action. The

1 benefits of maintaining this action on a class basis far outweigh any administrative burden in
2 managing the class action. Conducting the case as a class action would be far less burdensome
3 than prosecuting numerous individual actions.

4 **CLAIMS FOR RELIEF**

5 **FIRST CLAIM OF RELIEF**

6 **Failure to Pay Wages**
7 **(California Labor Code §§ 1185, 1194, 1194.2, 1197, and IWC Wage Orders)**

8 30. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

9 31. DEFENDANTS failed to pay wages through the intentional enforcement of the
10 following policies:

11 (a) requiring employees to work "off the clock" by, for example, arriving
12 early for set up, or clocking the employees out at the close of official business hours but
13 requiring them to continue working on customers' vehicles.

14 (b) requiring employees to work at hourly wage rates below minimum wage;

15 (c) failing to provide overtime pay for employees who are employed more
16 that eight (8) hours in any workday or more than (40) hours in the workweek;

17 (d) requiring employees to report to work and when the employee does report
18 for work, but is not put to work or is furnished less than half said employee's usual or scheduled
19 day's work, paying the employee less than half the usual or scheduled day's work at the
20 employee's regular rate of pay or less than the legal minimum;

21 (e) requiring employees to work split shifts without paying employees one
22 hour's pay at the minimum wage for each workday they work a split shift;

23 (f) requiring employees to work without being provided a minimum ten (10)
24 minute rest period for every four (4) hours or major fraction thereof worked and not being
25 compensated one (1) hour of pay at the employee's regular rate of compensation for each
26 workday that a rest period was not provided;

1 (g) requiring employees to work in excess of five (5) hours per day without
2 being provided a meal period and not being compensated one (1) hour of pay at the regular rate
3 (or minimum wage) of compensation for each workday that a meal period was not provided;

4 (h) failing to pay at least two times the minimum wage to employees whom
5 they required to provide and maintain hand tools;

6 (i) failing to provide and maintain tools or equipment required by the
7 DEFENDANTS or necessary to the performance of the jobs performed;

8 (j) requiring employees to purchase tools from the DEFENDANTS and/or
9 maintain tools and equipment without reimbursement; and

10 (k) failing to pay all wages due at employee's voluntary or involuntary
11 termination.

12 49. DEFENDANTS willfully violated the provisions of the Labor Code, other
13 California laws, and IWC Wage Order 9-2001.

14 50. DEFENDANTS failed to pay minimum wage "for all hours worked." In
15 particular, PLAINTIFFS and the class were forced or permitted to work "off the clock" time
16 without compensation before and after shifts and during meal periods.

17 51. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
18 states:

19 The minimum wage for employees fixed by the commission is the
20 minimum wage to be paid to employees, and the payment of a less
21 wage than the minimum so fixed is unlawful.

22 52. The applicable minimum wages are found in Wage Order 9-2001.

23 53. The minimum wage provisions of California Labor Code are enforceable by
24 private civil action under California Labor Code § 1194(a).

25 54. As described in California Labor Code § 1185 and § 1194.2, any such action
26 incorporates the applicable wage order of the California Labor Commission.
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1 55. PLAINTIFFS, individually and on behalf of the Class, may bring this action for
2 minimum wage and overtime, interest, costs of suit, and attorney's fees under § 1194(a), and
3 PLAINTIFFS and the Class are entitled to recover liquidated damages in an amount equal to the
4 wages unlawfully unpaid and interest thereon under California Labor Code § 1194.2(a).

5 **SECOND CLAIM FOR RELIEF**

6 **Failure To Pay Reporting Time Wages**
7 **(California Labor Code §§ 1194(a), 1194.2, 1197, and IWC Wage Orders)**

8 56. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

9 57. DEFENDANTS failed to pay reporting time wages. In particular, PLAINTIFFS
10 and the Class Members were forced to comply with work schedules that required them to report
11 to work and were furnished with less than half the employees' usual or scheduled day's work.

12 58. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
13 states:

14 The minimum wage for employees fixed by the commission is the
15 minimum wage to be paid to employees, and the payment of a less
16 wage than the minimum so fixed is unlawful.

16 59. The applicable reporting time wages fixed by the commission in Wage Order 9-
17 2001(5)(A).

18 60. The definition of "shift" is defined in Wage Order 9-2001(2)(M).

19 61. The minimum wage provisions of California Labor Code are enforceable by
20 private civil action under California Labor Code § 1194(a).

21 62. As described, in California Labor Code § 1185 and § 1194.2, any such action
22 incorporates the applicable wage order of the California Labor Commission.

23 63. As such, PLAINTIFFS, individually and on behalf of the Class, may bring this
24 action for minimum wage and overtime, interest, costs of suit, and attorney's fees under
25 § 1194(a), and PLAINTIFFS and the Class are entitled to recover liquidated damages in an
26 amount equal to the wages unlawfully unpaid and interest thereon under California Labor Code
27 § 1194.2.

THIRD CLAIM FOR RELIEF

**Failure to Provide Meal Periods or Compensation
in Lieu Thereof
(California Labor Code §§ 226.7, 512 and Wage Orders)**

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3 64. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

4 65. PLAINTIFFS allege that DEFENDANTS did not relieve employees of all duty
5 for meal periods, did not provide timely meal periods, and discouraged employees from taking
6 meal periods, in violation of California Labor Code §§ 226.7 and 512, and Wage Order 9-
7 2001(11).

8 66. Therefore, DEFENDANTS violated California Labor Code § 226.7 by failing to
9 provide the meal and rest periods mandated by Labor Code § 226.7 and the applicable wage
10 orders, and by failing to provide one hour pay at the employees' regular rate of compensation for
11 each work day that the meal period was not provided and one hour pay at the employees' regular
12 rate of compensation for each work day that the rest period is not provided.

13 67. On information and belief, PLAINTIFFS and the Class Members they seek to
14 represent did not voluntarily or willfully waive rest and/or meal periods. Any express or implied
15 waivers obtained from PLAINTIFFS and/or Class Members were not willfully obtained, were
16 not voluntarily agreed to, were a condition of employment, or part of a contract of an unlawful
17 adhesion. On information and belief, during the meal and rest period liability period,
18 DEFENDANTS did not permit or authorize PLAINTIFFS and Class Members to take meal and
19 rest periods in a timely manner, and DEFENDANTS did not relieve employees of all duty during
20 meal periods.

21 68. DEFENDANTS engage in practices that discouraged rest and meal breaks.

22 69. By failing to keep adequate time records required by §§ 226(a) and 1174(d) of the
23 Labor Code, DEFENDANTS have injured PLAINTIFFS and Class Members and made it
24 difficult to calculate the unpaid rest and meal period compensation due PLAINTIFFS and
25 members of the Class.

26 70. As a result of the unlawful acts of DEFENDANTS' actions, PLAINTIFFS and the
27 Class they seek to represent have been deprived of premium wages in amounts to be determined

1 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
2 attorneys' fees, and costs, under Labor Code §§ 203, 226, 226.7, and 1194.

3 **FOURTH CLAIM FOR RELIEF**

4 **Failure to Provide Rest Periods or Compensation**
5 **in Lieu Thereof (California Labor Code, §§ 226.7 and Wage Orders)**

6 71. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

7 72. PLAINTIFFS allege that the were not authorized or permitted to take full
8 statutory ten minute rest periods while in the employ of DEFENDANTS in violation of
9 California Labor Code § 226.7 and Wage Order 9-2001(12).

10 73. Therefore, DEFENDANTS violated California Labor Code § 226.7 by failing to
11 provide the meal and rest periods mandated by Labor Code § 226.7 and the applicable wage
12 orders, and by failing to provide one hour pay at the employees' regular rate of compensation for
13 each work day that the meal period was not provided and one hour pay at the employees' regular
14 rate of compensation for each work day that the rest period is not provided.

15 74. On information and belief, PLAINTIFFS and the Class Members they seek to
16 represent did not voluntarily or willfully waive rest and/or meal periods. Any express or implied
17 waivers obtained from PLAINTIFFS and/or Class Members were not willfully obtained, were
18 not voluntarily agreed to, were a condition of employment, or part of a contract of an unlawful
19 adherence. On information and belief, during the meal and rest period liability period,
20 DEFENDANTS did not permit or authorize PLAINTIFFS and Class Members to take meal and
21 rest periods in a timely manner, and DEFENDANTS did not relieve employees of all duty during
22 meal periods.

23 75. DEFENDANTS enforce practices that discouraged rest and meal breaks.

24 76. By failing to keep adequate time records required by §§ 226(a) and 1174(d) of the
25 Labor Code, DEFENDANTS have injured PLAINTIFFS and Class Members and made it
26 difficult to calculate the unpaid rest and meal period compensation due PLAINTIFFS and
27 members of the Class.

1 wages, PLAINTIFFS and certain Class Members who are no longer employed by
2 DEFENDANTS are entitled to 30 days' wages as a penalty under Labor Code § 203 for failure
3 to pay legal wages, together with interest thereon and attorneys' fees and costs.

4 **SIXTH CLAIM FOR RELIEF**

5 **Knowing and Intentional Failure to Comply With Itemized**
6 **Employee Wage Statement Provisions**
7 **(California Labor Code §§ 226(b), 1174, 2052)**

8 83. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

9 84. DEFENDANTS violated California Labor Code Section 226(a) by failing to
10 provide "accurate itemized statements" to employees because the wage statements:

11 (a) Falsely understated PLAINTIFFS' and the Class Members' gross wages
12 earned by failing to pay for all hours worked or rest and meal break wages;

13 (b) Falsely understated the total hours worked by PLAINTIFFS and the Class
14 Members by ignoring the total of hours actually worked;

15 (c) Falsely understated PLAINTIFFS' and Class Members' net wages earned
16 by failing to pay for all hours worked or rest and meal break wages; and

17 (d) Falsely understated PLAINTIFFS' and Class Members' "number of hours
18 worked at each hourly rate."

19 85. California Labor Code §§ 226(e) and (g) provide for the remedy for the violations
20 described above.

21 86. In addition, Section 1174(d) of the California Labor Code and Wage Order 9-
22 2001(7) require DEFENDANTS to maintain and preserve, in a centralized location, among other
23 items, records showing the names and addresses of all employees employed, payroll records
24 showing the hours worked daily by and the wages paid to its employees. DEFENDANTS have
25 created a uniform practice of knowingly and intentionally failing to comply with Labor Code
26 §§ 1174 and 2052 by maintaining dual timecards. When an employer fails to keep such records,
27 employees may establish the hours worked solely by their testimony and the burden of
28

1 overcoming such testimony shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d
2 721 (1988).

3 87. By failing to keep adequate time records required by sections 226, 1174(d) and
4 2052 of the Labor Code, DEFENDANTS have injured PLAINTIFFS and Class Members and
5 made it difficult to calculate the unpaid rest and meal period compensation due PLAINTIFFS
6 and Class Members and are entitled up to \$4,000.00 per Class Member.

7 **SEVENTH CLAIM FOR RELIEF**

8 **Failure to Reimburse Work Expenses**
9 **(California Labor Code §2802, Wage Orders)**

10 88. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

11 89. DEFENDANTS are required to reimburse employees for any expenditure
12 incurred in the discharge of their duties, under Labor Code §2802 and Wage Order 9-2001(9).

13 90. PLAINTIFFS and Class Members they seek to represent were not reimbursed for
14 purchasing uniforms, tools, equipment or materials used the cleaning of vehicles, such as, gloves,
15 spray bottles, and other equipment.

16 91. As a result, the DEFENDANTS are therefore liable to the PLAINTIFFS and the
17 Class for expenses, damages, attorney's fees and cost of suit.

18 **EIGHTH CLAIM FOR RELIEF**

19 **Violation of Unfair Competition Law**
20 **(California Business and Professions Code § 17200 et seq.)**

21 92. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth here.

22 93. As described above, DEFENDANTS have violated the following California laws:

23 (a) violation of California Labor Code § 201 (relating to the failure to pay
24 wages upon discharge);

25 (b) violation of California Labor Code § 202 (relating to the failure to pay
26 wages upon quitting);

27 (c) violation of California Labor Code § 223 (relating to the failure to pay
28 contractual wages);

1 (d) violation of California Labor Code § 226 (relating to providing correct
2 wage statements and keeping correct records);

3 (e) violation of California Labor Code § 226.7 (relating to the failure to
4 ensure proper meal periods and rest breaks);

5 (f) violation of California Labor Code § 512 (relating to the failure to ensure
6 proper meal periods);

7 (g) violation of California Labor Code §§ 1182.11, 1197 and the applicable
8 Wage Order (constituting the lawful minimum wage and payment of double minimum wage if
9 employees are required to supply their own tools);

10 (h) violation of California Labor Code § 2802 (reimbursement for employer-
11 required expenses); and

12 94. DEFENDANTS' activities also constitute unfair business practices in violation of
13 California Business and Professions Code §§ 17200 *et seq.*, because DEFENDANTS' practices
14 violate the above noted laws, and/or violate an established public policy and/or the practice is
15 immoral, unethical, oppressive, unscrupulous and substantially injurious to PLAINTIFFS, the
16 public, and the Class.

17 95. PLAINTIFFS and Class Members are entitled to injunctive and other equitable
18 relief against such unlawful practices in order to prevent future damage, for which there is no
19 adequate remedy at law, and to avoid a multiplicity of lawsuits.

20 96. As a result of their unlawful acts, DEFENDANTS have reaped and continue to
21 reap unfair benefits and unlawful profits at the expense of PLAINTIFFS, and the Class they seek
22 to represent. DEFENDANTS should be enjoined from this activity and made to disgorge these
23 ill-gotten gains and restore to PLAINTIFFS and the members of the Plaintiff Class the
24 wrongfully withheld wages under Business and Professions Code § 17203. PLAINTIFFS are
25 informed and believe, and thereon allege, that DEFENDANTS are unjustly enriched through
26 their requiring employees to suffer DEFENDANTS' failure to pay legal wages, and/or other
27 compensation for working through meal periods, and compensation for unprovided rest periods

1 to PLAINTIFFS and members of the Plaintiff Class. PLAINTIFFS are informed and believe,
2 and thereon allege, that PLAINTIFFS and members of the Plaintiff Class are prejudiced by
3 DEFENDANTS' unfair trade practices.

4 97. As a direct and proximate result of the unfair business practices of
5 DEFENDANTS, and each of them, PLAINTIFFS, individually and on behalf of all employees
6 similarly situated, are entitled to equitable and injunctive relief, including full restitution and/or
7 disgorgement of all wages which have been unlawfully withheld from PLAINTIFFS and Class
8 Members as a result of the business acts and practices described here and enjoining
9 DEFENDANTS to cease and desist from engaging in the practices described.

10 98. The unlawful conduct alleged is continuing, and there is no indication that
11 DEFENDANTS will not continue such activity into the future. PLAINTIFFS allege that if
12 DEFENDANTS are not enjoined from the conduct set forth in this Complaint, they will continue
13 to unlawfully require DEFENDANTS' non-exempt employees to work "off the clock" without
14 compensation, will continue to require non-exempt employees to work during meal periods, will
15 continue to fail to provide rest periods or provide appropriate compensation in lieu thereof.

16 99. PLAINTIFFS further request that the Court issue a preliminary and permanent
17 injunction prohibiting DEFENDANTS from requiring PLAINTIFFS and the Class they seek to
18 represent to work "off the clock" without compensation, prohibiting other wrongful conduct
19 which is the subject of this Complaint and which may later be discovered in the course of
20 litigation, enjoining DEFENDANTS from forbidding employees to leave the workplace during
21 meal periods, and from continuing to fail to provide rest periods and meal periods or provide
22 appropriate compensation in lieu thereof.

23 **PRAYER**

24 WHEREFORE, PLAINTIFFS pray for judgment as follows:

25 A. That the Court determine that this action may be maintained as a class action or
26 actions;

27 B. For compensatory damages in an amount according to proof with interest thereon;

1 C. For economic and/or special damages in an amount according to proof with
2 interest thereon;

3 D. For a declaratory judgment that each of the DEFENDANTS violated the
4 PLAINTIFFS' and Class Members' rights under the California Labor Code and applicable IWC
5 Wage Order as set forth in the preceding paragraphs;

6 E. That each of the DEFENDANTS be found to have engaged in unfair competition
7 in violation of California Business and Professions Code § 17200 *et seq.*;

8 F. That each of the DEFENDANTS be ordered and enjoined to make restitution to
9 the Class due to their unfair competition, including disgorgement of their wrongfully-obtained
10 revenues, earnings, profits, compensation, and benefits, under California Business and
11 Professions Code §§ 17203 and 17204;

12 G. That each of the DEFENDANTS be enjoined from continuing the unlawful or
13 unfair competition in violation of § 17200 as alleged;

14 H. For declaratory relief for DEFENDANTS' violation of the California Labor Code
15 and California Business and Professions Code.

16 I. That DEFENDANTS be enjoined from further acts of restraint of trade or unfair
17 competition;

18 J. For premium wages under Labor Code §§ 226 and 226.7;

19 K. For unpaid wages under California Labor Code § 1194 and liquidated damages
20 under Labor Code § 1194.2;

21 L. For an order imposing all statutory and/or civil penalties provided by law,
22 including but not limited to, penalties under Labor Code §§ 203, 210, 225.5, 226, 226.3, 226.7,
23 512, 1174.5, 1194, 1194.2, and 1197.1.

24 M. An award to PLAINTIFFS and the Class Members of reasonable attorneys' fees,
25 costs, and interest thereon under Code of Civil Procedure § 1021.5, Labor Code §§ 218.6, 226,
26 1194, 2802(c) and/or other applicable law;

27

28

1 N. For all relief available under Labor Code 2802 and the Wage Order for failure to
2 reimburse expenses;

3 O. For actual, incidental, and consequential damages for breach of contract; and

4 P. For such other and further relief as the Court deems just and proper.

5 **DEMAND FOR JURY TRIAL**

6 PLAINTIFFS hereby demand trial of their claims by jury to the extent authorized by law.

7 Dated: May 21, 2012

8 Respectfully submitted,



9 Victor Viramontes
10 Nicholas Espiritu
11 MEXICAN AMERICAN LEGAL DEFENSE
12 AND EDUCATIONAL

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Attorneys for Plaintiffs