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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
8 UNLIMITED JURISDICTION
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10 JOSE MELVIN ALVARADO,
11 Plaintiff, on behalf of himself and all
12 others similarly situated

13 vs.

14 TIMBER WORKS CONSTRUCTION, INC.
and DOES 1 through 100, inclusive,
15 Defendants.
16

Case No.

**AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

**(Violation of: Labor Code Sections 201,
203, 218, 225.5, 226, 226.7, 510, 512, 1194,
1194.2, 1198, IWC Wage Order No. 16-
2001; Fraud; Civil Penalties Pursuant To
PAGA-Labor Code 2698, et seq.)**

17 **GENERAL ALLEGATIONS**

18 1. Plaintiff is informed and believes and on that basis allege that at all times mentioned in
19 this complaint defendant Timber Works Construction, Inc., was a corporation licensed to do business
20 and doing business in the City of Palo Alto, Santa Clara County, California, with its principal place of
21 business located in Santa Clara County, California.

22 2. Defendants Does 1 - 100 are fictitiously named defendants whose names and identities
23 are presently unknown to plaintiff. Plaintiff will amend the complaint to allege the true names and
24 capacities of the fictitiously named defendants and the charging allegations when the same are
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1 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
2 defendants is responsible in some manner for the occurrences alleged in this complaint, and that
3 plaintiff's damages as herein alleged were proximately caused by those defendants.

4 3. At all times mentioned in this complaint, defendants Does 1 through 100 were the
5 owners, partners, agents, servants, and/or employees of their codefendants, and in doing the things
6 hereinafter alleged were acting in the scope of their authority as owners, partners, agents, servants,
7 and/or employees.

8 4. At all times mentioned in this complaint, the named defendants and defendants Does 1
9 through 100 were employers within the definition of California law, and plaintiff and his co-workers at
10 all times herein employees of said defendants within the definition of California law.

11 5. At all times mentioned in this complaint, defendants Does 1 through 100 were persons
12 and/or business entities acting as plaintiff's employers or were persons and/or business entities acting
13 on behalf of plaintiff's employers.

14 6. Plaintiff Jose Melvin Alvarado worked for defendants as a laborer from approximately
15 March, 2013 to approximately December, 2014. He performed all—or substantially all—of his work
16 for defendants in Santa Clara County.

17 7. Plaintiff and his co-workers were not exempt employees under California Law.
18 Plaintiff's claims are brought pursuant to the California Code of Civil Procedure § 382 on behalf of a
19 proposed Class of laborers and people who performed the tasks of laborers (referred to collectively in
20 this Complaint as "Class Members") employed at defendants' businesses during the period
21 commencing four years prior to the filing of this action (the "Class Period") and continuing through the
22 present. Upon information and belief, plaintiff alleges that defendants have employed more than one
23 hundred laborers during the proposed Class Period.

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3 8. Plaintiff and his co-workers worked more than eight hours in a day and/or more than 40
4 hours in a work week for which they were not paid overtime and/or double time compensation
5 pursuant to the provisions of California law.

6 9. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
7 defendants knew that they were required to pay plaintiff and his co-workers overtime compensation at
8 a rate of one and one-half times the regular rate and/or double time compensation at a rate of two times
9 the regular rate, and knew or should have known that plaintiff and his co-workers worked in excess of
10 eight hours per day and/or forty hours in a workweek.

11 10. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned,
12 defendants knew that they had a duty to compensate plaintiff and his co-workers at the proper overtime
13 and/or double time rates as required by California law, and that defendants had the financial ability to
14 pay such overtime and double time compensation, but willfully, knowingly and intentionally failed to
15 do so. Defendants also failed to provide plaintiff and his co-workers with accurate written itemized
16 statements.

17 11. Defendants did not have a meal period policy in effect during plaintiff's employment
18 with defendants and furthermore denied plaintiff and his co-workers uninterrupted meal periods in
19 violation of California law and Industrial Welfare Commission ("IWC") Wage Order No. 16-2001.

20 12. Defendants did not have a rest break policy in effect during plaintiff's employment with
21 defendants and furthermore denied plaintiff and his co-workers uninterrupted rest periods in violation
22 of California law and IWC Wage Order No. 16-2001.

23 13. Defendants engaged in fraudulent activity by requiring that before plaintiff and his co-
24 workers could receive their respective pay check on paydays, plaintiff (and his co-workers) each had to
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1 sign two different documents: one document specifying false hours worked (fewer hours than actually
2 worked) and another document specifying the correct hours worked by plaintiff (and his co-workers).
3 On information and belief, plaintiff alleges that this was done to bill a government agency, a
4 contractor, or others, for the actual hours worked by plaintiff (and his coworkers) but to pay plaintiff
5 (and his coworkers) for a false, reduced number of hours worked. Defendants told plaintiff (and his
6 co-workers) that the lower amount of wages was all they were entitled to. Defendants knew this to be
7 false yet persisted with this conduct against plaintiff (and his co-workers) with the intent to defraud
8 them. Plaintiff (and his co-workers) believed defendants and justifiably relied on defendants' false
9 representations and, as a result, suffered substantial financial loss due to defendants' fraudulent
10 activity.

11 VENUE

12 14. Venue in Santa Clara County Superior Court is proper under California Code of Civil
13 Procedure § 395.5 because defendants' violations as alleged herein occurred in Santa Clara County and
14 defendants' liability arose in Santa Clara County.

15 CLASS ACTION ALLEGATIONS

16 15. Plaintiff brings this action on behalf of himself and a proposed Class of all persons or
17 entities who have been employed by defendants as a laborer and anyone who performed the tasks of
18 laborer in the State of California at any time within four years preceding the filing of this action.

19 16. This action is brought as a class action under the Code of Civil Procedure § 382. Class
20 treatment is appropriate because there is a well-defined community of interest in the litigation and the
21 proposed Class is easily ascertainable. This action satisfies the predominance, typicality, numerosity,
22 superiority, and adequacy of representation requirements under § 382.

23 a. Numerosity: The size of the proposed plaintiff Class makes individual
24 joinder of all members impractical. While plaintiff does not presently know the exact
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1 number of Class Members, Plaintiff is informed and believes, and thereon alleges, that
2 Defendants have employed more than one hundred people as laborers during the last
3 four years.

4 b. Commonality: Common questions of law and fact exist as to all
5 members of the proposed Plaintiff Class and predominate over any questions that affect
6 only individual members of the Class. These common questions of law and fact
7 include, but are not limited to, the following:

- 8 i. Whether defendants have failed to meet its minimum wage obligations in
9 violation of California Labor Code §§ 1194 *et seq.*;
- 10 ii. Whether defendants knew or should have known that Class Members regularly
11 worked over 40 hours per week and/or eight hour per day;
- 12 iii. Whether defendants properly paid Class Members overtime wages for time
13 worked in excess of 40 hours per week or eight hours per day;
- 14 iv. Whether defendants have failed to provide Class Members with adequate meal
15 and rest periods and compensation for missed meal and rest periods in violation
16 of California Labor Code §§ 226.7 and IWC Wage Order No. 4;
- 17 v. Whether defendants have knowingly and intentionally failed to provide Class
18 Members with accurate and itemized wage statements pursuant to California
19 Labor Code § 226 and IWC Wage Order No. 4;
- 20 vi. Whether defendants have violated California Labor Code §§201-203 by failing,
21 upon termination, to timely pay Class Members wages that were due for
22 minimum wage, overtime, and missed meal periods;
- 23 vii. Whether defendants' failure to pay Class Members for all hours worked, failure
24 to pay Class Members overtime compensation, failure to pay Class Members the
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1 minimum wage, failure to provide Class Members with meal and rest periods
2 and meal and rest period compensation, failure to provide Class Members with
3 accurate itemized wage statements, failure to maintain documentation of the
4 rates of pay for each hour worked and failure to timely pay Class Members all
5 wages that were due upon termination constitute an unlawful, unfair, and/or
6 fraudulent business practices under Cal. Business & Professions Code §17200,
7 *et seq.*;

8 c. Typicality: plaintiff's claims are typical of the claims of the Class.
9 Plaintiff and Class Members sustained damages arising out of defendants' common
10 course of conduct in violation of the law as alleged herein.

11 d. Adequacy of Representation: Plaintiff is a Member of the Class, does
12 not have any conflicts of interest with other Class Members, and will represent and
13 protect the interests of the Class Members. Plaintiff's counsel are competent and
14 experienced in litigating employment class actions.

15 e. Superiority: A class action is superior to other available means of
16 adjudicating this controversy. Class treatment will permit a large number of similarly
17 situated persons to prosecute their common claims in a single forum simultaneously,
18 efficiently, and without unnecessary duplication of effort and expense that numerous
19 individual claims would entail. Class treatment will also avoid the risk of inconsistent
20 or contradictory judgments.

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22 **FIRST CAUSE OF ACTION**

23 **(Violation of Labor Code Sections 510, 1194 and 1198)**

24 **(Unpaid Overtime and/or Double Time)**

1 17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 13 as if set
2 forth in full.

3 18. The defendants' conduct described in this complaint violates the provisions of
4 California Labor Code section 1198 which provides that it is unlawful to employ persons for longer
5 than the hours set by the IWC.

6 19. At all times herein set forth, IWC Wage Order No. 16-2001 provides that employees are
7 entitled to overtime compensation at the rate of one and one-half times his or her regular rate of pay for
8 all hours worked in excess of eight hours in a day or more than forty hours in a workweek, and
9 employees are entitled to double time compensation at the rate of two times his or her regular rate of
10 pay for all hours worked in excess of twelve hours in a day or more than eight hours on any seventh
11 day of a workweek. In addition, this right to overtime compensation and/or double time compensation
12 has been codified in California Labor Code section 510. Defendants failed to pay plaintiff and
13 proposed Class Members the uncompensated overtime and/or double time owed.

14 20. During his employment with defendants, plaintiff worked more than eight hours per day
15 and/or more than forty hours in a workweek for which he was not paid the applicable overtime or
16 double time compensation pursuant to California law. Despite the hours worked by plaintiff and
17 proposed Class Members, defendants willfully, in bad faith, and in knowing violation of the California
18 Labor Code, failed and refused to pay them overtime and/or double time compensation.

19 21. Defendants' failure to pay plaintiff and proposed Class Members the unpaid balance of
20 overtime and/or double time compensation as required by IWC Wage Order No. 16-2001 violates the
21 provisions of Labor Code section 1198 and is therefore unlawful. This conduct also violates the
22 provisions of Labor Code section 510.

23 22. Therefore, plaintiff and proposed Class Members are entitled to recover from
24 defendants the unpaid balance of overtime and/or double time compensation, to be determined at trial,
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1 plus interest on that amount, reasonable attorney's fees and costs of this suit pursuant to California
2 Labor Code section 1194(a).

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4 **SECOND CAUSE OF ACTION**

5 **(Violation of Labor Code Sections 226.7 and 512)**

6 **(Denied/Unpaid Meal Periods)**

7 23. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
8 forth in full.

9 24. The defendants' conduct described in this complaint violates the provisions of Labor
10 Code section 512 which provides that an employer may not employ an employee for a work period of
11 more than five hours per day without providing the employee with a meal period of not less than 30
12 minutes. Labor Code section 512 further provides that an employer may not employ an employee for a
13 work period of more than 10 hours per day without providing the employee with a second meal period
14 of not less than 30 minutes.

15 25. The defendants' conduct described in this complaint also violates the provisions of
16 California Labor Code section 226.7 which provides that no employer shall require any employee to
17 work during any meal period mandated by an applicable order of the IWC.

18 26. IWC Wage Order No. 16-2001 provides that an employer may not employ an employee
19 for a work period of more than five hours per day without providing the employee with an
20 uninterrupted meal period of not less than 30 minutes. IWC Wage Order No. 16-2001 further provides
21 that an employer may not employ an employee for a work period of more than 10 hours per day
22 without providing the employee with a second meal period of not less than 30 minutes. IWC Wage
23 Order No. 16-2001 also provides that unless the employee is relieved of all duty during a 30 minute
24 meal period, the meal period shall be considered an "on duty" meal period and counted as time
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1 worked.

2 27. IWC Wage Order No. 16-2001 provides that if an employer fails to provide an
3 employee a meal period in accordance with the applicable provisions of this order, the employer shall
4 pay the employee one hour of pay at the employee's regular rate of compensation for each work day
5 that the meal period is not provided.

6 28. Defendants denied plaintiff and proposed Class Members uninterrupted meal periods
7 and plaintiff and proposed Class Members were required to work through the meal periods that should
8 have been provided by defendants.

9 29. Defendants willfully, in bad faith, and in knowing violation of California Labor Code
10 sections 226.7 and 512 and IWC Wage Order No. 16-2001, denied plaintiff and proposed Class
11 Members uninterrupted meal periods.

12 30. Therefore, plaintiff and proposed Class Members are entitled to recover from
13 defendants the unpaid balance of wages earned while working during meal periods, including overtime
14 and/or double time compensation, and one hour of pay at each employee's regular rate of
15 compensation for each work day that the uninterrupted meal period was not provided, all to be
16 determined at trial, plus interest on that amount.

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18 **THIRD CAUSE OF ACTION**
19 **(Violation of Labor Code Section 226.7)**
20 **(Denied/Unpaid Rest Periods)**

21 31. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
22 forth in full.

23 32. The defendants' conduct described in this complaint violates the provisions of
24 California Labor Code section 226.7 which provides that no employer shall require any employee to
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1 work during any rest period mandated by an applicable order of the IWC.

2 33. IWC Wage Order No. 16-2001 provides that every employer shall authorize and permit
3 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
4 period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten
5 minutes net rest time per four hours or major fraction thereof. Authorized rest period time shall be
6 counted as hours worked for which there shall be no deduction from wages.

7 34. If an employer fails to provide an employee a rest period in accordance with IWC Wage
8 Order No. 16-2001, the employer shall pay the employee one hour of pay at the employee's regular
9 rate of compensation for each work day that the rest period is not provided.

10 35. Defendants denied plaintiff and proposed Class Members uninterrupted rest periods and
11 plaintiff and proposed Class Members were required to work through the rest periods that should have
12 been provided by defendants.

13 36. Defendants willfully and in knowing violation of California Labor Code section 226.7
14 and IWC Wage Order No. 16-2001, denied plaintiff and proposed Class Members uninterrupted rest
15 periods.

16 37. Therefore, plaintiff and proposed Class Members are entitled to recover from
17 defendants the unpaid balance of wages earned while working during rest periods, including overtime
18 and/or double time compensation, and one hour of pay at the employee's regular rate of compensation
19 for each work day that the rest period was not provided, all to be determined at trial, plus interest on
20 that amount.

21 **FOURTH CAUSE OF ACTION**

22 **(Violation of Labor Code Sections 1194 and 1194.2)**

23 **(Failure to Pay Minimum Wage)**

24 38. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
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forth in full.

39. The defendants' conduct described in this complaint violates the provisions of California Labor Code section 1194 which provides that "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney's fees, and costs of suit."

40. Based on the number of hours worked by plaintiff and proposed Class Members during the pay periods, those falsely reported by defendants, and the rate at which plaintiff and proposed Class Members were compensated during those pay periods, plaintiff and proposed Class Members did not receive the minimum wage required by law. Despite the hours worked by plaintiff and proposed Class Members, defendants willfully and in knowing violation of the California Labor Code, failed and refused to pay plaintiff the minimum wage.

41. Therefore, plaintiff and proposed Class Members are entitled to recover from defendants the unpaid balance of the full amount of the minimum wage due them, in an amount to be determined at trial, plus interest on that amount, reasonable attorney's fees and costs of this suit pursuant to California Labor Code section 1194(a). Plaintiff and proposed Class Members are also entitled to recover from defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code section 1194.2.

FIFTH CAUSE OF ACTION

(Violation of Labor Code Section 226)

(Failure to Provide Accurate Written Itemized Statements of Wages)

42. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set forth in full.

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43. The conduct of defendants described in this complaint violates the provisions of California Labor Code section 226 which provides that every employer shall, semimonthly or at the time of each payment of wages, furnish the employee with an accurate itemized statement in writing showing, among other things, the gross wages earned, the total hours worked by the employee, all deductions from the employee's wages, the net wages earned, the pay period, the name of the employee, the name and address of the legal entity that is the employer, and the applicable hourly rates and number of hours worked by the employee at each hourly rate.

44. Because defendants did not pay plaintiff and proposed Class Members for all hours that they worked or provide uninterrupted meal periods and uninterrupted rest periods as herein alleged, defendants owed plaintiff unpaid wages and applicable statutory penalties in the form of premium wages. These unpaid wages and premium wages were due at the time plaintiff and proposed Class Members were paid their regular wages. Defendants knowingly and intentionally failed to include the amounts of these unpaid wages and premium wages on plaintiff's and proposed Class Members' written itemized statements of wages. Therefore, defendants knowingly and intentionally failed to provide plaintiff and proposed Class Members with accurate written itemized statements of wages as required by California Labor Code section 226.

45. Moreover, in failing and refusing to pay plaintiff and proposed Class Members the overtime due them, and in failing and refusing to pay plaintiff and proposed Class Members the minimum wage, defendants did not provide plaintiff and proposed Class Members with accurate written itemized statements of wages as required by California Labor Code section 226.

46. Therefore, plaintiff and proposed Class Members are entitled to recover from defendants the penalties provided for in Labor Code section 226(e) along with costs and reasonable attorneys' fees.

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SIXTH CAUSE OF ACTION

(Violation of Labor Code Sections 201, 203 and 218)

(Waiting Time Penalties)

47. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set forth in full.

48. At all times herein set forth, California Labor Code section 218 authorizes employees to “sue directly . . . for any wages or penalty due him [or her] under [the Labor Code].”

49. Labor Code section 201(a) provides in part that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

50. Labor Code section 203 provides that “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.”

51. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned defendants knew that they had a duty to pay plaintiff and proposed Class Members who are no longer employed with defendants their wages at the time they was discharged from or quit their employment, and that defendants had the financial ability to pay such wages, but willfully, knowingly and intentionally failed to do so. Defendants’ failure to pay plaintiff and proposed Class Members no longer employed with defendants their wages earned within the time required by law, was willful and in violation of California Labor Code section 203.

1 52. Therefore, plaintiff and proposed Class Members are entitled to recover from
2 defendants the statutory penalty for each day that they were not paid their wages upon separation from
3 employment up to a thirty-day maximum pursuant to California Labor Code section 203.
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5 **SEVENTH CAUSE OF ACTION**

6 **(Violation of Business and Professions Code Sections 17200 *et seq.*)**

7 **(Unfair Business Practices)**

8 53. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
9 forth in full.

10 54. In failing and refusing to pay plaintiff and proposed Class Members unpaid wages,
11 unpaid minimum wages, overtime, and/or double time pay, and in failing and refusing to provide
12 plaintiff and proposed Class Members with uninterrupted meal periods and uninterrupted rest periods,
13 and in failing and refusing to provide plaintiff and proposed Class Members with accurate written
14 itemized statements of their wages, and in failing to pay plaintiff and proposed Class Members no
15 longer working for defendants their owed and unpaid wages at the time of their termination, and in
16 doing the acts herein alleged, defendants have engaged and are engaging in unlawful and unfair
17 business practices in violation of Labor Code sections 201, 203, 218, 225.5, 226, 226.7, 510, 512,
18 1194, 1194.2, 1198, and IWC Wage Order No. 16-2001.

19 55. Defendants' violations of Labor Code sections 201, 203, 218, 225.5, 226, 226.7, 510,
20 512, 1194, 1194.2, 1198, and IWC Wage Order No. 9-2001 constitute unlawful, unfair or fraudulent
21 business practices in violation of California Business and Professions Code sections 17200, *et seq.*

22 56. As a proximate result of defendants' unlawful, unfair and/or fraudulent business
23 practices defendants have made improper and illegal profits from their illegal activities. Plaintiff and
24 proposed Class Members are entitled to restitution of the losses they have sustained and disgorgement
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1 of defendants' improper profits.

2 **EIGHTH CAUSE OF ACTION**

3 **(Fraud – Intentional Misrepresentation)**

4 57. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
5 forth in full.

6 58. Defendants, in engaging in the conduct specified in paragraph 13, herein above,
7 intentionally misrepresented to plaintiff and proposed Class Members that the two documents needed
8 to be signed by plaintiff and proposed Class Members in order for them to receive their pay checks.

9 59. Defendants knew these statements to be false and made these statements in reckless
10 disregard of the truth.

11 60. Defendants intended that plaintiff and proposed Class Members rely on defendants'
12 misrepresentations.

13 61. Plaintiff and proposed Class Members believed defendants and reasonably relied on
14 defendants' misrepresentations.

15 62. Defendants' conduct was unjustified and without legal basis.

16 63. As a proximate result of plaintiff's and proposed Class Members' reasonable reliance
17 on defendants' misrepresentations, plaintiff and proposed Class Members sustained damages in an
18 amount not yet ascertained but to be proven at trial.

19 64. Plaintiff's and proposed Class Members' reliance on defendants' misrepresentations
20 was a substantial factor in causing plaintiff's and proposed Class Members' damages.

21 65. As a proximate result of defendants' fraudulent conduct, plaintiff and proposed Class
22 Members have suffered and continue to suffer damages in an amount to be determined at trial.

23 66. In doing the acts herein alleged, defendants acted with oppression, fraud and/or malice
24 and in conscious disregard of plaintiff's and proposed Class Members' rights, and as such plaintiff
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1 seeks punitive and exemplary damages on behalf of himself and proposed Class Members in an
2 amount according to proof.

3 **NINTHTH CAUSE OF ACTION**

4 **(Fraud – Negligent Misrepresentation)**

5 67. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set
6 forth in full.

7 68. Defendants, in engaging in the conduct specified in paragraph 13, herein above,
8 negligently misrepresented to plaintiff and proposed Class Members that the two documents needed to
9 be signed by plaintiff and proposed Class Members in order for them to receive their pay checks, as
10 there was no basis for the defendants' statement of misrepresentations to plaintiff and proposed Class
11 Members.

12 69. Defendants knew these statements to be false and made them in a negligent and reckless
13 disregard of the truth.

14 70. Defendants intended that plaintiff and proposed Class Members rely on defendants'
15 misrepresentations.

16 71. Plaintiff and proposed Class Members believed defendants and reasonably relied on
17 defendants' misrepresentations.

18 72. Defendants' conduct was unjustified and without legal basis.

19 73. As a proximate result of plaintiff's and proposed Class Members reasonable reliance on
20 defendants' misrepresentation plaintiff and proposed Class Members sustained damages in an amount
21 not yet ascertained but to be proven at trial.

22 74. Plaintiff's and proposed Class Members reliance on defendants' misrepresentations was
23 a substantial factor in causing plaintiff's and proposed Class Members' damages.

24 75. As a proximate result of defendants' fraudulent conduct, plaintiff and proposed Class
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1 Members have suffered and continue to suffer damages in an amount to be determined at trial.

2 76. In doing the acts herein alleged, defendant acted with oppression, fraud and/or malice
3 and in conscious disregard of plaintiff's and proposed Class Members' rights, and as such plaintiff
4 seeks punitive and exemplary damages on behalf of himself and proposed Class Members in an
5 amount according to proof.

6 **TENTH CAUSE OF ACTION**

7 **(Private Attorney General Act, Labor Code § 2698, et seq.)**

8 77. Plaintiff has satisfied the prerequisites for commencing this civil action found in Labor
9 code § 2699.3. On November 7, 2014, Plaintiff sent notice by certified mail to Defendant and the
10 Labor Code and Workforce Development Agency (LWDA) of the specific provisions of the Labor
11 Code that Defendant violated, including the facts and theories to support the alleged violations. The
12 LWDA has not provided Plaintiff notice under Labor Code § 2699.3 (a)(2)(A).

13 78. Plaintiff qualifies as an "aggrieved employee" within the meaning of Labor Code §
14 2699(c) because he was employed by defendants, and defendants committed Labor Code violations
15 against him, as alleged in this Amended Complaint.

16 79. As an aggrieved employee, plaintiff seeks to collect civil penalties under Labor Code §
17 2699(a) on behalf of himself and other current and former employees of defendant for the above-
18 described Labor Code violations including:

19 a. Under Labor Code § 2699(f), a civil penalty of one hundred dollars (\$100) for
20 plaintiff and each current or former employee per pay period for the initial violation of Labor
21 Code § 1184, for failure to pay the legal minimum wage or the legal overtime compensation
22 applicable to the employee, and two hundred dollars (\$200) for plaintiff and each current or
23 former employee per pay period for each subsequent violation of Labor Code § 1194;

24 b. Under Labor Code § 558, civil penalties of fifty dollars (\$50) for plaintiff and
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1 each current or former employee per pay period for the initial violation of failing to pay
2 overtime premium wages under Labor Code §510, and for each subsequent violation, one
3 hundred dollars (\$100) for plaintiff and each current or former employee for each pay period
4 for which the employee was underpaid under Labor Code § 510, plus an amount sufficient to
5 recover unpaid wages.

6 c. Under Labor Code §558, civil penalties of fifty dollars (\$50) for plaintiff and
7 each current or former employee per pay period for the initial violation of Labor Code § 226.7
8 and Wage Order 7-2001, § 11, for failing to authorize or provide meal periods, and one
9 hundred dollars (\$100) for plaintiff and each current or former employee per pay period for
10 each subsequent violation of Labor Code § 226.7 and Wage Oder 7-2001, § 11, for failing to
11 authorize meal periods, plus amount sufficient to recover unpaid premium wages;

12 d. Under Labor Code § 558, a civil penalty of fifty dollars (\$50) for plaintiff and
13 each current or former employee per pay period for the initial violation of Labor Code § 226.7
14 and Wage Order 7-2001, § 12, for failing to authorize or provide rest periods, and one hundred
15 dollars (\$100) for plaintiff and each current or former employee per pay period for each
16 subsequent violation of Labor Code § 226.7 and Wage Order 7-2001, § 12, for failing to
17 authorize or provide rest periods, plus an amount sufficient to recover unpaid premium wages;

18 e. Under California Labor Code § 226.3, which provides for civil penalties for
19 violations of California Labor Code § 226(a), a civil penalties for violations of California Labor
20 Code §226(a), a civil penalty of two hundred fifty dollars (\$250) for plaintiff and each
21 aggrieved employee for the first violation of failing to provide timely, accurate, itemized wage
22 statement, and one thousand dollars (\$1000) for plaintiff and each aggrieved employee for each
23 subsequent violation of Labor Code § 226(a);

24 f. Under California Labor Code § 225.5—which provides that every employer
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1 who unlawfully withholds wages due any employee in violation of California Labor Code §§
2 216, 221, 222, or 223—a civil penalty of one hundred dollars (\$100) for the initial violation
3 and two hundred dollars (\$200) for each subsequent failure to pay each employee, plus 25% of
4 the amount unlawfully withheld;

5 g. Under California Labor Code §§ 203(a) and 256, which provide for civil
6 penalties for violations of California Labor Code §§ 201 & 202, a civil penalty of up to 30
7 days' wages for plaintiff and each aggrieved employee for willful failure to pay all wages due
8 upon termination or within 72 hours after the employee's resignation of the employee does not
9 provide 72 hours' notice;

10 h. Under Labor Code § 2699(f), a civil penalty of one hundred dollars (\$100) for
11 plaintiff and each current or former employee per pay period for the initial violation of Labor
12 Code § 2802, for failure to indemnify employees for business expenses, and two hundred
13 dollars (\$200) for plaintiff and each current or former employee per pay period for each
14 subsequent violation of Labor Code § 2802, plus interest; and

15 i. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred
16 dollars (\$100) for plaintiff and each aggrieved employee per pay period for the initial violation
17 of Labor Code § 1198 for failing to provide seating as required by Wage Order 7-2001, § 14,
18 and two hundred dollars (\$200) for Plaintiff aggrieved employee per pay period for each
19 subsequent violation of Labor Code § 1198.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE plaintiff, on behalf of himself and proposed Class Members, respectfully
23 requests relief as follows:

- 24 1. For compensatory damages, including lost wages and employment benefits according to
25

1 proof;

2 2. For general and special damages, as may be appropriate;

3 3. For an award of interest, including prejudgment and post judgment interest, at the legal
4 rate;

5 4. For all actual, consequential, and incidental losses and damages, according to proof,
6 including but not limited to unpaid wages (including unpaid minimum wages, and unpaid overtime
7 wages);

8 5. For pre-judgment interest on any sums due from the day such amounts were due;

9 6. For punitive and exemplary damages;

10 7. For an award of penalties pursuant to Labor Code section 226 and/or Labor Code
11 section 226.7 and/or Labor Code section 510 and/or Labor Code section 1194 and/or IWC Wage Order
12 No. 16-2001;

13 8. For liquidated damages and interest thereon pursuant to Labor Code section 1194.2;

14 9. For an award of statutory penalties pursuant to Labor Code section 203;

15 10. For an award of reasonable attorneys' fees;

16 11. For an award of costs and reasonable attorneys' fees pursuant to Labor Code section
17 226(e);

18 12. For an award of costs and reasonable attorneys' fees pursuant to Labor Code section
19 1194(a);

20 13. For civil penalties under Labor Code section 2699 in an amount according to proof;

21 14. For attorneys' fees and costs, as authorized under Labor Code section 2699(g)(1);

22 15. For costs of suit incurred herein; and,

23 16. For such other and further relief as the Court deems appropriate
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Dated: April __, 2015

Law Offices Of Arthur Albert Navarette

By: _____
Arthur A. Navarette, Attorney for
Plaintiff Jose Melvin Alvarado

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of the causes of action and claims asserted herein.

Dated: April __, 2015

Law Offices Of Arthur Albert Navarette

By: _____
Arthur A. Navarette, Attorney for
Plaintiff Jose Melvin Alvarado

