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6
7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 * * *

10 JULIAN SMOTHERS an individual, residing in
11 Fresno County, California; and ASA
DHADDA, an individual, residing in Fresno
12 County, California,

13 Plaintiffs,

14 vs.

15 NORTHSTAR ALARM SERVICES, LLC, A
16 Utah Corporation; and Does 1 through 50,
17 inclusive,

18 Defendants.

Case No. 2:17-CV-00548-KJM-KJN

**PLAINTIFFS' SECOND AMENDED
COMPLAINT FOR DAMAGES
FOR:**

**CLASS ACTION UNDER CAL.
CODE OF CIV. PROC. § 382**

- 19 **(1) Failure To Pay Minimum Wages
In Violation Of Labor Code §§ 1194,
1194.2 & 1197;**
- 20 **(2) Failure To Pay Overtime Wages In
Violation Of Labor Code § 510;**
- 21 **(3) Failure To Provide All Mandated
Meal Periods Or Additional Wages In
Lieu Thereof;**
- 22 **(4) Failure To Provide All Mandated
Rest Periods Or Additional Wages In
Lieu Thereof;**
- 23 **(5) Failure To Reimburse Business-
Related Expenses In Violation Of
Labor Code § 2802;**
- 24 **(6) Failure To Issue Accurate Wage
Statements In Violation Of Labor
Code § 226;**
- 25 **(7) Failure To Timely Pay Wages Due
At Termination In Violation Of Labor
Code §§ 201, 202, & 203;**
- 26 **(8) Unfair Competition (Bus. & Prof.**

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Code § 17200);

(9) Unlawful Wage Deductions In Violation Of Labor Code §§ 221, 223, & 224

COLLECTIVE ACTION UNDER 29 U.S.C. § 216(b)

(10) Failure To Pay Minimum Wages In Violation Of 29 U.S.C. § 206;

(11) Failure To Pay Overtime Wages In Violation Of 29 U.S.C. § 207;

CLAIMS UNDER LABOR CODE § 2698 ET SEQ.

(12) Civil Penalties For Failure To Pay Minimum Wage For Each Hour Worked;

(13) Civil Penalties For Failure To Pay Overtime Wages;

(14) Civil Penalties For Failure To Provide Meal Periods;

(15) Civil Penalties For Failure To Provide Rest Periods;

(16) Civil Penalties For Failure To Issue Itemized Wage Statements;

(17) Civil Penalties For Failure To Maintain Adequate And Accurate Time And Payroll Records;

(18) Civil Penalties For Failure To Provide Notice Of Pay;

(19) Civil Penalties For Failure To Pay Wages Due And Payable Twice Each Calendar Month;

(20) Civil Penalties For Failure To Pay Wages Due Upon Demand;

(21) Civil Penalties For Failure To Pay Wages Due Upon Termination

JURY TRIAL DEMANDED

1 Plaintiffs JULIAN SMOTHERS and ASA DHADDA (hereinafter collectively
2 “PLAINTIFFS”) allege against Defendant NORTHSTAR ALARM SERVICES, LLC, a Utah
3 Corporation, (“DEFENDANT”) and Does 1 through 50, inclusive as follows:

4 **GENERAL ALLEGATIONS**

5 **A. THE PARTIES**

6 1. JULIAN SMOTHERS is an individual who, at all times relevant herein, was
7 residing in Fresno County, Sacramento County, or Los Angeles County California, and is a
8 former employee of DEFENDANT. Additional details concerning Mr. Smothers’ work
9 experience with DEFENDANT is detailed herein.

10 2. ASA DHADDA is an individual who, at all times relevant herein, was residing in
11 either Fresno County or Los Angeles County California, and is a former employee of
12 DEFENDANT. Additional details concerning Mr. Dhadda’s work experience with
13 DEFENDANT is detailed herein.

14 3. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT is
15 now, and at all times relevant to this Complaint was, a Utah limited liability company, with
16 employees in Sacramento Country, throughout California, and throughout the United States.
17 Additional details concerning DEFENDANT’s operations are set forth herein below.

18 4. PLAINTIFFS are unaware of the true names and/or capacities, whether
19 individual, partnership, limited partnership, corporate, or otherwise, of the Defendants sued
20 herein as DOES 1 through 50, inclusive, and each of them, and therefore sues such Defendants
21 by such fictitious names pursuant to Code of Civil Procedure section 474. PLAINTIFFS are
22 informed and believe, and thereon allege, that each of the Defendants sued herein, including
23 DOES 1 through 50, inclusive, is and was proximately the cause of or contributed to cause the
24 damages hereinafter alleged, or in some other manner is responsible in whole or in part for the
25 damages which have been, are being, and will be suffered by PLAINTIFFS as alleged herein.
26 When the true names and/or capacities of the Defendants are ascertained, PLAINTIFFS will seek
27 leave to amend this Complaint to insert the same herein with appropriate charging allegations.

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1 5. PLAINTIFFS are informed and believe and thereon allege that DEFENDANT
2 and each of the DOE Defendants were acting at all relevant times herein, as the agents,
3 ostensible agents, joint-venturers, joint-employers, servants, employees, co-conspirators and/or
4 associates of each of the other Defendants, and were at all times acting within the course and
5 scope of said agency, servitude, employment, joint-venture, association, and/or conspiracy and
6 with the permission and consent of the other Defendants.

7 6. PLAINTIFFS are informed and believe, and thereon allege that, at all times
8 relevant to this Complaint, DEFENDANT and DOE Defendants were and/or are the joint
9 employers of PLAINTIFFS and/or the class upon whose behalf PLAINTIFFS bring these class
10 action claims, in that Defendants exercised sufficient control over PLAINTIFFS' wages, hours
11 and working conditions, and/or suffered or permitted PLAINTIFFS to work, so as to be
12 considered the joint employers of PLAINTIFFS.

13 7. PLAINTIFFS are informed and believe, and thereon allege, that the above
14 Defendants and/or each of their managing agents and supervisors aided, abetted, condoned,
15 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

16 8. PLAINTIFFS are informed and believe, and thereon allege that, at all times
17 relevant to this Complaint, the various acts and representations of Defendants, including each of
18 the DOE Defendants, and each agent or representative of Defendants, were the result of, and in
19 furtherance of, an agreement whereby the Defendants and each agent or representative of the
20 Defendants knowingly conspired to engage in the acts described herein, including, but not
21 limited to, Defendants' violation of the California Labor Code and/or any applicable Industrial
22 Welfare Commission Wage Order(s).

23 9. PLAINTIFFS, on behalf of themselves and all similarly situated current and
24 former employees of DEFENDANT who give their written consent to become party-plaintiffs,
25 which consents will be filed with the court, seek to have the following cause of action proceed as
26 a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b). These
27 individuals shall hereinafter be referred to collectively as the "FLSA Group." PLAINTIFFS
28 seeks to represent the FLSA Group according to the following class and/or subclass definition:

1 **FLSA Group**

2 All current and former non-exempt Alarm Installation Technicians and Lead
3 Alarm Installation Technicians who performed compensable work for
4 DEFENDANT in the United States at any time from February 3, 2014 through
5 December 31, 2017.

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7 10. PLAINTIFFS, on behalf of themselves and all other similarly situated current and
8 former employees of DEFENDANT, seek to have the following causes of action certified to
9 proceed as a class action pursuant to California Code of Civil Procedure section 382. These
10 individuals shall hereinafter be referred to collectively as the “California Class.” PLAINTIFFS
11 seek to represent the California Class according to the following class and/or subclass
12 definitions:

13 **California Class 1**

14 All current and former non-exempt Alarm Installation Technicians and Lead
15 Alarm Installation Technicians who performed compensable work for
16 DEFENDANT in the State of California at any time from February 3, 2013
17 through December 31, 2017.

18
19 Unless otherwise specified, individuals making up the “FLSA Group” and “California
20 Class” shall hereinafter be referred to collectively as the “Class Members.”

21 11. PLAINTIFFS reserve the right under California Rules of Court Rule 3.765(b) to
22 amend or modify the class description with greater specificity or further division into subclasses
23 or limitation to particular issues.

24 **B. THE ACTION**

25 12. This action is brought, in part, to remedy the following:

- 26 (a) DEFENDANT’s failure to pay PLAINTIFFS and the California Class
27 Members at least minimum wage for, among other things, required travel
28 time between employment locations, waiting time at employment

1 locations, time spent in daily meetings, time spent repairing defective
2 alarm systems, time spent documenting inventory, and time spent
3 participating in trainings;

4 (b) DEFENDANT's failure to pay PLAINTIFFS and the California Class
5 Members overtime and/or double time wages, as required by California
6 Labor Code section 510 and Industrial Welfare Commission Wage Order
7 4 and/or any other applicable Wage Order due to, among other things,
8 DEFENDANT's omission of nondiscretionary bonuses from its
9 calculation of its employees' regular rate of pay;

10 (c) DEFENDANT's failure to pay PLAINTIFFS and the FLSA Class
11 Members overtime wages due and owing, as required by the Fair Labor
12 Standards Act, 29 U.S.C. § 207;

13 (d) DEFENDANT's failure to pay PLAINTIFFS and the FLSA Class
14 Members minimum wages due and owing, as required by the Fair Labor
15 Standards Act, 29 U.S.C. § 206;

16 (e) DEFENDANT's failure to provide PLAINTIFFS and the California Class
17 Members with a reasonable opportunity to take a first net thirty-minute,
18 duty-free meal period for each workday during which such employees
19 worked more than five (5) hours, as mandated by California law, or to pay
20 such employees one (1) hour of additional wages at the employees'
21 regular rate of compensation for each workday for which the duty-free
22 meal period was and/or is not provided, as required by California Labor
23 Code sections 226.7 and 512 and Industrial Welfare Commission Wage
24 Order 4 and/or any other applicable Wage Order;

25 (f) DEFENDANT's failure to provide PLAINTIFFS and the California Class
26 Members with a reasonable opportunity to take a second net thirty-minute,
27 duty-free meal period for each workday during which such employees
28 worked more than ten (10) hours, as mandated by California law, or to pay

1 such employees one (1) hour of additional wages at the employees'
2 regular rate of compensation for each workday for which the duty-free
3 meal period was and/or is not provided, as required by California Labor
4 Code sections 226.7 and 512 and Industrial Welfare Commission Wage
5 Order 4 and/or any other applicable Wage Order;

6 (g) DEFENDANT's failure to provide PLAINTIFF and the California Class
7 Members with a reasonable opportunity to take a paid net ten-minute,
8 duty-free rest period per four hours worked or major fraction thereof, as
9 mandated by California law, or to pay such employees one (1) hour of
10 additional wages at the employees' regular rate of compensation for each
11 workday for which the duty-free rest period was and/or is not provided, as
12 required by Industrial Welfare Commission Wage Order 4 and/or any
13 other applicable Wage Order;

14 (h) DEFENDANT's failure to timely pay PLAINTIFFS and the California
15 Class Members all wages due and payable twice during each calendar
16 month, as required by California Labor Code section 204;

17 (i) DEFENDANT's failure to pay PLAINTIFFS and the California Class
18 Members all wages due and owing upon the termination of employment
19 with DEFENDANT, as required by California Labor Code section 201,
20 202, and 203;

21 (j) DEFENDANT's failure to pay PLAINTIFFS and the California Class
22 Members all wages due and payable on demand, as required by California
23 Labor Code section 216 and 225.5;

24 (k) DEFENDANT's failure to issue PLAINTIFFS and the California Class
25 Members proper notice of pay, as required by California Labor Code
26 section 2810.5.

27 (l) DEFENDANT's failure to maintain a written commission agreement for
28 PLAINTIFFS and the California Class Members, as required by California

1 Labor Code section 2751(a);

2 (m) DEFENDANT's failure to issue accurate, itemized wage statements to
3 PLAINTIFFS and the California Class Members in accordance with
4 California law;

5 (n) DEFENDANT's failure to maintain adequate time and payroll records for
6 PLAINTIFFS and the California Class Members, as required by Labor
7 Code section 1174;

8 (o) DEFENDANT's failure to reimburse PLAINTIFFS and the California
9 Class Members for all necessary expenditures and losses directly caused
10 by the discharge of their duties; and,

11 (p) DEFENDANT's engagement in unfair business practices against
12 PLAINTIFFS and the California Class Members.

13 (q) DEFENDANT's decision to make deductions from the standard wages of
14 California Class Members that amounted to a rebate and/or deduction
15 from the standard wages set forth in the California Class Members
16 agreement(s) with DEFENDANT.

17 **C. VENUE**

18 13. Venue is proper in Sacramento County because, among other reasons, certain of
19 the violations of the California Labor Code and/or Industrial Welfare Commission Wage
20 Order(s) were committed in Sacramento County and DEFENDANT conducts business and has
21 facilities in Sacramento County. The unlawful acts alleged have a direct effect on PLAINTIFFS
22 and other Class Members. PLAINTIFFS and the Class Members will continue to suffer the same
23 harm as PLAINTIFFS as a result of DEFENDANT's wrongful conduct unless the relief
24 requested herein is granted.

25 14. PLAINTIFFS are informed and believe, and thereon allege, that during the three-
26 year period preceding the filing of this class action, no other class action has been filed asserting
27 the same or similar factual allegations against DEFENDANT on behalf of the same or similar
28 Class Members.

1 **D. CLASS ACTION ALLEGATIONS**

2 15. The following causes of action have been brought and properly may be
3 maintained as a class action under the provisions of 29 U.S.C. 216(b) and/or California Code of
4 Civil Procedures section 382 because: a) there is a well-defined community of interest in the
5 litigation; and b) the proposed class is easily ascertainable.

6 **Numerosity**

7 16. The potential members of the class as defined are so numerous that joinder of all
8 members of the class is impracticable. PLAINTIFFS are informed and believe and thereon allege
9 that at all times mentioned herein PLAINTIFFS and the Class Members are or have been
10 affected by DEFENDANT's and DOES 1-50's unlawful practices as alleged herein.

11 17. Accounting for employee turnover during the relevant period covered by this
12 action necessarily and substantially increases the number of employees covered by this action.
13 PLAINTIFFS are informed and believe and thereon allege that DEFENDANT's and DOES 1-
14 50's employment records would provide information as to the actual number and location of all
15 Class Members. Joinder of all members of the proposed class is not practicable.

16 **Commonality**

17 18. DEFENDANT employed PLAINTIFFS and the Class Members as Alarm
18 Installation Technicians for the purpose of installing and servicing its residential home security
19 and home automation products and services. Some of the Class Members worked as team leads
20 in addition to performing their own installations. PLAINTIFFS and many of the Class Members
21 generally worked on a seasonal basis from approximately mid-April to September, during which
22 time they followed a relatively predictable schedule and lived in company housing, although
23 some PLAINTIFFS and Class Members worked all year.

24 19. During the summer season, PLAINTIFFS and the Class Members would typically
25 commence their day by reporting for a morning meeting, during which the team would discuss
26 company issues, review basic points of training, and go over any relevant policy changes.
27 Following the meeting, PLAINTIFFS and the Class Members would drive out into the field to
28 complete alarm installation and service jobs to which they were assigned.

1 20. PLAINTIFFS and the Class Members would repeat this schedule Monday through
2 Saturday, working approximately 40 to 85 hours per week on average.

3 21. At all relevant times herein, PLAINTIFFS and all the Class Members were paid
4 primarily on a piece-rate basis for each installation, according to a uniform set of policies for the
5 various piece rates attributable to each type of job installation, with no separate form of hourly
6 compensation. Thus, PLAINTIFFS and the Class Members were not paid any separate form of
7 hourly compensation for tasks such as attending morning meetings, traveling to the field, waiting
8 in the field between installation jobs, traveling between installation jobs, correcting defective
9 installations, or turning in forms and accounting for inventory at the end of the day.

10 22. On information and belief, PLAINTIFFS and the Class Members allege that at
11 least through April 2017, DEFENDANT did not have any standard form of timekeeping to track
12 the number of hours PLAINTIFFS and the Class Members spent either completing installations
13 or performing other non-installation tasks throughout the day.

14 23. PLAINTIFFS and the Class Members were also uniformly subject to an “Install
15 Technician Job Description and Compensation Addendum,” which set forth the various
16 compensation and benefits that PLAINTIFFS and all Class Members could receive through their
17 employment with DEFENDANT. Beginning in or about January 2015, PLAINTIFFS and the
18 Class Members were also uniformly subject to a set of written policies and procedures in a
19 document entitled “Policy Handbook,” which contained DEFENDANT’s written timekeeping,
20 compensation, and meal and rest period policies applicable to PLAINTIFFS and all the Class
21 Members.

22 24. At all relevant times herein, PLAINTIFFS and the Class Members all received
23 itemized wage statements of a uniform format, containing identical categories of information,
24 even if the values within those categories differed on the basis of the amount and value of the
25 work performed by PLAINTIFFS and the Class Members over a pay period.

26 25. At all relevant times herein, PLAINTIFFS and the Class Members were subject to
27 a uniform policy governing reimbursement of expenses, which policy did not expressly include
28 reimbursement for required tools or business-related mileage.

1 26. Based on the foregoing uniform compensation and workplace policies and
2 procedures that applied in like manner to PLAINTIFFS and all of the Class Members, as well as
3 uniformity in the job description and compensation benefits available to PLAINTIFFS and all of
4 the Class Members, there are questions of law and fact common to the class predominating over
5 any questions affecting only individual Class Members. These common questions of law and fact
6 include, without limitation:

7 a. Whether DEFENDANT violated California Labor Code sections 1194,
8 1194.2 and 1197 and/or Industrial Welfare Commission (“IWC”) Wage
9 Order 4 and/or any other applicable Wage Order by failing to pay
10 PLAINTIFFS and the California Class Members minimum wages for
11 travel time between employment locations, waiting time at employment
12 locations, time spent in daily meetings, time spent repairing defective
13 alarm systems, time spent documenting inventory, and time spent
14 participating in trainings;

15 b. Whether DEFENDANT violated California Labor Code section 510
16 and/or Industrial Welfare Commission Wage Order 4 and/or any other
17 applicable Wage Order by failing to pay PLAINTIFFS and the California
18 Class Members the overtime and double time wages to which they are
19 entitled for hours worked in excess of eight (8) hours in one workday,
20 forty (40) hours in one workweek, and/or for hours worked on the seventh
21 workday of a workweek;

22 c. Whether DEFENDANT violated the Fair Labor Standards Act, 29 U.S.C.
23 § 207 by failing to pay PLAINTIFFS and the FLSA Group the overtime
24 wages to which they are entitled for hours worked in excess of forty (40)
25 hours in one workweek;

26 d. Whether DEFENDANT violated the Fair Labor Standards Act, 29 U.S.C.
27 § 206 by failing to pay PLAINTIFFS and the FLSA Group the minimum

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1 wages to which they are entitled for hours worked generally, during meal
2 periods, “on-call” time, and at times otherwise off-the-clock;

3 e. Whether DEFENDANT violated California Labor Code sections 226.7
4 and 512 and/or Industrial Welfare Commission Wage Order 4 and/or any
5 other applicable Wage Order by failing to provide PLAINTIFFS and the
6 California Class Members with a first thirty-minute, duty-free meal period
7 for each workday during which such employees worked more than five (5)
8 hours, or by paying such employees one (1) hour of additional wages at
9 the employees’ regular rate of compensation;

10 f. Whether DEFENDANT violated California Labor Code sections 226.7
11 and 512 and/or Industrial Welfare Commission Wage Order 4 and/or any
12 other applicable Wage Order by failing to provide PLAINTIFFS and the
13 California Class Members with a second thirty-minute, duty-free meal
14 period for each workday during which such employees worked more than
15 ten (10) hours, or by paying such employees one (1) hour of additional
16 wages at the employees’ regular rate of compensation;

17 g. Whether DEFENDANT violated California Labor Code section 226.7 and
18 Industrial Welfare Commission Wage Order 4 and/or any other applicable
19 Wage Order by failing to provide PLAINTIFFS and the California Class
20 Members with one (1) ten-minute, duty-free rest period for each workday
21 during which such employees worked more than four (4) hours, and for
22 every four (4) hours or major fraction thereof.

23 h. Whether DEFENDANT violated California Labor Code sections 201, 202
24 and 203 by failing to pay all wages due and owing at the time that any
25 California Class Member’s employment with DEFENDANT and/or
26 DOES 1–50 ended, whether voluntarily or involuntarily;

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- i. Whether DEFENDANT violated California Labor Code section 226 by failing to issue accurate, itemized wage statements to PLAINTIFFS and the California Class Members;
- j. Whether DEFENDANT violated California Labor Code section 1174 by failing to maintain accurate time and payroll records for PLAINTIFFS and the California Class Members;
- k. Whether DEFENDANT violated California Labor Code section 2802(a) by failing to reimburse PLAINTIFFS and the California Class Members for expenditures and losses necessarily incurred in the direct discharge of their duties;
- l. Whether DEFENDANT violated California Business and Professions Code section 17200 *et seq.* and engaged in unlawful, unfair, and deceptive business practices by violating California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 2441, 2802, 2810.5 and/or Industrial Welfare Commission Wage Order 4 and/or any other applicable Wage Order and/or failing to: (1) pay minimum, regular, overtime, and/or double time wages to the Class Members; (2) permit the Class Members to take a net thirty-minute, duty-free meal period when they worked more than five (5) hours in a workday and/or pay such employees additional wages as required by California law; (3) pay all owed wages at the time that any Class Member's employment with DEFENDANT ended, whether voluntarily or involuntarily; (4) issue mandated, accurate, itemized wage statements;
- m. Whether DEFENDANT violated California Labor Code sections 221, 223, and 224 when it made deductions from California Class Members compensation that amounted to a rebate and/or deduction of the California Class Members wages;

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1 n. Whether PLAINTIFFS and the California Class Members are entitled to
2 equitable relief pursuant to California Business and Professions Code
3 section 17200 *et seq*; and

4 o. Whether PLAINTIFFS and the California Class Members are entitled to
5 penalties pursuant to California Labor Code section 2698 *et seq*.

6 **Typicality**

7 27. PLAINTIFFS and the Class Members were all employed by DEFENDANT as
8 Lead or regular Alarm Installation Technicians, and therefore were all uniformly subject to the
9 same template “Install Technician Job Description and Compensation Addendum” which
10 detailed the compensation and job duties of PLAINTIFFS and the Class Members. PLAINTIFFS
11 and the Class Members all generally followed a similar daily routine during the summer season,
12 which included attendance at morning meetings, travel to and between installation jobs,
13 performance of installations, service work, and return travel to DEFENDANT’s base of
14 operations followed by completion of daily paperwork and accounting for inventory.
15 PLAINTIFFS and the Class Members all performed the same or substantially similar jobs, in that
16 all were responsible for the installation and service of DEFENDANT’s home security and home
17 automation products. PLAINTIFFS and the Class Members were all uniformly subject to the
18 same written policies and procedures of DEFENDANT as contained in the “Policy Handbook.”
19 PLAINTIFFS and the Class Members all received itemized wage statements of the same general
20 form. DEFENDANT tracked the compensation of PLAINTIFFS and the Class Members using
21 the same general payroll system and based on a uniform set of policies and procedures governing
22 the rate of compensation and the applicable piece-rates attributable to various jobs. By reason of
23 the fact that PLAINTIFFS were therefore subject to all of the same modes of compensation,
24 policies and procedures applicable to timekeeping, job performance, provision of meal and rest
25 periods and issuance of itemized wage statements as the rest of the Class Members,
26 PLAINTIFFS’ claims are typical of the class claims. PLAINTIFFS and all Class Members
27 sustained injuries and damages arising out of, and caused by, DEFENDANT’s and DOES 1–50’s

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1 common course of conduct in violation of California and United States laws, regulations, and
2 statutes as alleged herein.

3 **Adequacy of Representation**

4 28. PLAINTIFFS will fairly and adequately represent and protect the interests of the
5 Class Members. Counsel who represents PLAINTIFFS is competent and experienced in
6 litigating wage and hour class actions and California Business and Professions Code section
7 17200 *et seq.* cases.

8 **Superiority of Class Action**

9 29. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable and
11 questions of law and fact common to the class predominate over any questions affecting only
12 individual members of the Class. Each member of the Class has been damaged and is entitled to
13 recovery as a result of DEFENDANT'S and DOES 1-50's unlawful policies and practices
14 alleged in this Complaint.

15 30. Class action treatment will allow those similarly situated persons to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 PLAINTIFFS are unaware of any difficulties likely to be encountered in the management of this
18 action that would preclude its maintenance as a class action.

19 **E. BACKGROUND ALLEGATIONS**

20 31. DEFENDANT is a Utah limited liability company that markets and installs home
21 security and automation products and services. DEFENDANT operates in various states
22 throughout the country. Specifically, DEFENDANT operates in Washington, Oregon, California,
23 Nevada, Idaho, Utah, Arizona, Colorado, New Mexico, Kansas, Oklahoma, Texas, Louisiana,
24 Arkansas, Missouri, Minnesota, Wisconsin, Illinois, Alabama, Tennessee, Kentucky, Nebraska,
25 Indiana, Michigan, Ohio, Pennsylvania, the District of Columbia, Maryland, Virginia, North
26 Carolina, South Carolina, Delaware, Georgia and Florida, where it utilizes non-exempt
27 employees under the job titles of Alarm Installation Technicians and Lead Alarm Installation
28 Technicians to install and service its signature alarm systems. DEFENDANT's general mode of

1 operation is to establish a team of Alarm Installation Technicians within a given city or area,
2 generally setting them up in a central apartment complex that simultaneously functions as a base
3 of operations. Teams generally consist of one Lead Alarm Installation Technician and several
4 regular Alarm Installation Technicians. The duties and roles of Lead and regular Alarm
5 Installation Technicians are generally the same, with the exception that Lead Technicians have
6 additional responsibilities such as some oversight and inventory control duties.

7 32. Plaintiff JULIAN SMOTHERS is a former non-exempt employee of
8 DEFENDANT, and Plaintiff ASA DHADDA is a current non-exempt employee of
9 DEFENDANT. Plaintiff JULIAN SMOTHERS worked as a regular Alarm Installation
10 Technician in locations throughout California. Plaintiff ASA DHADDA worked as a Lead and
11 regular Alarm Installation Technician in locations throughout California, Indiana, Michigan,
12 Texas, Oklahoma and Illinois.

13 33. PLAINTIFFS are informed and believe, and thereon allege, that at all times
14 mentioned herein, DEFENDANT had and has statutory obligations to pay PLAINTIFFS and all
15 other similarly situated Class Members at a rate of no less than minimum wage for all hours
16 worked, and a rate of one-and-a-half times the regular rate of pay for all hours worked in excess
17 of eight (8) in a workday, forty (40) in a workweek, and/or for the first eight (8) hours on the
18 seventh day of work in any one workweek. PLAINTIFFS further allege that DEFENDANT had
19 and has statutory obligations to pay PLAINTIFFS and all other similarly situated Class Members
20 at the rate of twice the regular rate of pay for all hours worked in excess of twelve (12) hours in a
21 workday and for any work in excess of eight (8) hours on the seventh day of a workweek.

22 34. PLAINTIFFS are informed and believe, and thereon allege, that at all times
23 mentioned herein, DEFENDANT had and has statutory obligations to provide PLAINTIFFS and
24 all other similarly situated Class Members with a net thirty-minute, duty-free meal period during
25 any workday during which such employees worked more than five hours and/or pay such
26 employees additional wages at the regular rate of pay.

27 35. PLAINTIFFS are informed and believe, and thereon allege, that at all times
28 mentioned herein, DEFENDANT had and has statutory obligations to provide PLAINTIFFS and

1 all other similarly situated Class Members with a second net thirty-minute, duty-free meal period
2 during any workday during which such employees worked more than ten hours and/or pay such
3 employees additional wages at the regular rate of pay.

4 36. PLAINTIFFS are informed and believe, and thereon allege, that at all times
5 mentioned herein, DEFENDANT had and has statutory obligations to timely pay all wages owed
6 to PLAINTIFFS and all other similarly situated Class Members at the time that any Class
7 Member's employment with DEFENDANT ended, whether voluntarily or involuntarily.

8 37. PLAINTIFFS are informed and believe, and thereon allege, that at all times
9 mentioned herein, DEFENDANT had and has statutory obligations to timely pay all wages due
10 and payable after a demand has been made.

11 38. PLAINTIFFS are informed and believe, and thereon allege, that at all times
12 mentioned herein, DEFENDANT had and has statutory obligations to issue PLAINTIFFS and
13 the Class Members adequate notice of pay with certain specified information.

14 39. PLAINTIFFS are informed and believe, and thereon allege, that at all times
15 mentioned herein, DEFENDANT had and has statutory obligations to timely pay all wages due
16 and payable twice during each calendar month.

17 40. PLAINTIFFS are informed and believe, and thereon allege, that at all times
18 mentioned herein, DEFENDANT had and has statutory obligations to issue mandated, accurate,
19 itemized wage statements to PLAINTIFFS and all other similarly situated Class Members.

20 41. PLAINTIFFS are informed and believe, and thereon allege, that at all times
21 mentioned herein, DEFENDANT had and has statutory obligations to maintain written
22 commission agreements for PLAINTIFFS and the Class Members.

23 42. PLAINTIFFS are informed and believe, and thereon allege, that at all times
24 mentioned herein, DEFENDANT had and has statutory obligations to accurate time and payroll
25 records for PLAINTIFFS and the Class Members.

26 43. PLAINTIFFS are informed and believe, and thereon allege, that at all times
27 mentioned herein, DEFENDANT had and has statutory obligations to reimburse employees for
28 necessary expenditures and losses incurred in the direct discharge of their duties. PLAINTIFFS

1 are further informed and believe, and thereon allege, that at all times mentioned herein,
2 DEFENDANT had a statutory obligation to assure that any unreimbursed necessary expenditures
3 and losses incurred in the direct discharge of their duties did not consequently reduce employees'
4 compensation to below minimum wage.

5 44. PLAINTIFFS are informed and believe, and thereon allege, that at all times
6 mentioned herein, DEFENDANT had and has statutory obligations to collect or receive wages
7 from its employees that have already been earned by performance unless it is: (1) authorized in
8 writing by the employee; and (2) does not amount to a rebate or deduction from the employees'
9 standard wage as set forth in the parties' agreement.

10 45. PLAINTIFFS are informed and believe, and thereon allege, that PLAINTIFFS
11 and other similarly situated Class Members did not secret or absent themselves from
12 DEFENDANT nor did they refuse to accept the earned but unpaid wages from DEFENDANT.

13 46. PLAINTIFFS are informed and believe, and thereon allege, that at all times
14 mentioned herein, DEFENDANT failed to satisfy the aforementioned statutory obligations.

15 47. As a result of DEFENDANT's actions, PLAINTIFFS and other similarly situated
16 Class Members suffered damages, including lost pay, wages, and interest.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE §§ 1194, 1194.2 & 1197**

19 **(MINIMUM WAGE)**

20 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
21 **and DOES 1 through 50)**

22 48. The allegations of each of the foregoing paragraphs are re-alleged and
23 incorporated herein by the reference.

24 49. DEFENDANT failed to pay PLAINTIFFS and the Class Members minimum
25 wages for all hours worked, including time DEFENDANT required these individuals to work off
26 the clock, including but not limited to travel time between employment locations, waiting time at
27 employment locations, time spent in daily meetings, time spent repairing defective alarm
28 systems, time spent documenting inventory, and time spent participating in trainings.

1 50. California Labor Code section 1197 provides that “[t]he minimum wage for
2 employees fixed by the commission is the minimum wage to be paid to employees, and payment
3 of less than the minimum so fixed is unlawful.”

4 51. The applicable minimum wage fixed by the commission for employees, such as
5 PLAINTIFFS and Class Members is found in section 4(A) of IWC Wage Order No. 7.

6 52. The minimum wage provisions of the California Labor Code are enforceable by
7 private action pursuant to California Labor Code section 1194(a), which states:

8 Notwithstanding any agreement to work for a lesser wage, any
9 employee receiving less than the legal minimum wage or the legal
10 overtime compensation applicable to the employee is entitled to
11 recover in a civil action the unpaid balance of the full amount of
12 this minimum wage or overtime compensation, including interest
thereon, reasonable attorney’s fees, and costs of suit.

13 53. As described in California Labor Code sections 1185 and 1194.2, any such action
14 incorporates the applicable Wage Order of the Industrial Welfare Commission.

15 54. California Labor Code section 1194.2 also provides for the following remedies:

16 In any action under . . . Section 1194 to recover wages because of
17 the payment of a wage less than the minimum wage fixed by an
18 order of the commission, an employee shall be entitled to recover
19 liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

20 55. As such, PLAINTIFFS, individually and on behalf of Class Members, may bring
21 this action for minimum wages and overtime, interest, costs of suit, and attorneys’ fees pursuant
22 to California Labor Code section 1194(a).

23 56. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and the Class
24 Members have been deprived of wages in amounts to be proven at trial and are entitled to
25 recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and
26 interest thereon, pursuant to California Labor Code section 1194.2 and reasonable attorneys’
27 fess, costs of suit, and penalties pursuant to section 1197.1.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 510**

3 **(OVERTIME PAY)**

4 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
5 **and DOES 1 through 50)**

6 57. The allegations of each of the foregoing paragraphs are re-alleged and
7 incorporated herein by this reference.

8 58. California Labor Code section 510, subsection (a), provides as follows:

9 Eight hours of labor constitutes a day's work. Any work in excess
10 of eight hours in one workday and any work in excess of 40 hours
11 in any one workweek and the first eight hours worked on the
12 seventh day of work in any one workweek shall be compensated at
13 the rate of no less than one and one-half times the regular rate of
14 pay for an employee. Any work in excess of 12 hours in one day
15 shall be compensated at the rate of no less than twice the regular
16 rate of pay for an employee. In addition, any work in excess of
17 eight hours on any seventh day of a workweek shall be
18 compensated at the rate of no less than twice the regular rate of pay
19 of an employee. Nothing in this section requires an employer to
20 combine more than one rate of overtime compensation in order to
21 calculate the amount to be paid to an employee for any hour of
22 overtime work.

23 59. PLAINTIFFS are informed and believe, and thereon allege, that PLAINTIFFS
24 and other Class Members systematically worked for periods of more than eight hours in a
25 workday, forty hours in a workweek, and/or worked on the seventh day of a workweek without
26 being compensated at the rate of one-and-a-half times their regular rate of pay, or alternatively
27 for periods of more than twelve hours in a workday and/or more than eight hours on the seventh
28 day of a workweek without being compensated at the rate of twice their regular rate of pay, due
to DEFENDANT's failure to, among other things, nondiscretionary bonuses in its calculation of
the regular rate of pay.

60. Accordingly, DEFENDANT violated California Labor Code section 510 by
failing to pay PLAINTIFFS and the Class Members at the appropriate rate of pay on the basis of
the number of hours worked each workweek, and/or on the basis of work performed on the
seventh day of a workweek. By its failure to properly compensate PLAINTIFFS and the Class

1 Members at the correct rate of pay, DEFENDANT is liable for the difference between wages
2 paid to PLAINTIFFS and the Class Members and the wages actually owed had DEFENDANT
3 compensated such employees at the correct rate of pay.

4 61. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and Class
5 Members have been deprived of additional wages in amounts to be proven at trial and are
6 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of
7 suit in addition to any other relief requested below.

8 **THIRD CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

10 **(MEAL PERIODS)**

11 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
12 **and DOES 1 through 50)**

13 62. The allegations of each of the foregoing paragraphs are re-alleged and
14 incorporated herein by this reference.

15 63. California Labor Code section 512, subsection (a), provides as follows:

16 An employer may not employ an employee for a work
17 period of more than five hours per day without providing
18 the employee with a meal period of not less than 30
19 minutes, except that if the total work period per day of the
20 employee is no more than six hours, the meal period may
21 be waived by mutual consent of both the employer and
22 employee. An employer may not employ an employee for a
work period of more than 10 hours per day without
providing the employee with a second meal period of not
less than 30 minutes, except that if the total hours worked is
no more than 12 hours, the second meal period may be
waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

23 64. Similarly, section 10 of Industrial Welfare Commission Wage Order 4 provides as
24 follows:

25 A. No employer shall employ any person for a work period of
26 more than five (5) hours without a meal period of not less
27 than 30 minutes, except that when a work period of not
28 more than six (6) hours will complete the day's work the
meal period may be waived by mutual consent of the
employer and the employee.

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

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13 65. California Labor Code section 226.7 provides, in pertinent part, as follows:

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

23 66. PLAINTIFFS are informed and believe, and thereon allege, that PLAINTIFFS
24 and Class Members systematically worked periods of more than five hours in a workday without
25 being provided a mandatory thirty-minute, duty-free meal period and worked periods of more
26 than ten hours in a workday without being provided a mandatory second thirty-minute, duty-free
27 meal period while in the employ of DEFENDANT. Specifically, PLAINTIFFS are informed and
28 believe, and thereon allege, that, at all times mentioned herein, DEFENDANT maintained
company policies that did not provide its employees the opportunity to take a meal period during
the workday, including workdays during which employees worked more than five hours or ten
hours. PLAINTIFFS are further informed and believe, and thereon allege, that DEFENDANT
did not pay PLAINTIFFS or any of the other affected Class Members an additional one (1)-
hour's wage at the regular rate of pay for each meal period that was not provided as stated above.

67. Accordingly, DEFENDANT violated California Labor Code sections 226.7 and
512 by failing to provide meal periods mandated by California Labor Code sections 226.7 and
Section 10 of IWC Wage Order 4 and/or any other applicable Wage Order to their employees
who worked more than five hours in a workday. By their failure to provide a meal period for
days on which non-exempt employees work(ed) in excess of five hours, and failing to pay one

1 hour of additional wages at the regular rate of pay in lieu of each meal period not provided,
2 DEFENDANT violated California Labor Code sections 226.7 and 512 and Section 10 of IWC
3 Wage Order 4 and/or any other applicable Wage Order. DEFENDANT is liable for one hour of
4 additional wages at each of the affected Class Members' regular rate of compensation for each
5 workday for which a meal period was not lawfully provided, or for the difference between the
6 additional wages paid to the Class Members and the correct amount owed based on the Class
7 Members' regular rates of pay.

8 68. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and Class
9 Members have been deprived of additional wages in amounts to be proven at trial and are
10 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of
11 suit in addition to any other relief requested below.

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE §§ 226.7 AND INDUSTRIAL WELFARE**

14 **COMMISSION WAGE ORDER NO. 4**

15 **(REST PERIODS)**

16 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
17 **and DOES 1 through 50)**

18 69. The allegations of each of the foregoing paragraphs are re-alleged and
19 incorporated herein by this reference.

20 70. Section 12 of Industrial Welfare Commission Wage Order 4 provides, in pertinent
21 part, as follows:

- 22 A. Every employer shall authorize and permit all employees to
23 take rest periods, which insofar as practicable shall be in
24 the middle of each work period. The authorized rest period
25 time shall be based on the total hours worked daily at the
26 rate of ten (10) minutes net rest time per four (4) hours or
27 major fraction thereof....Authorized rest period time shall
28 be counted as hours worked for which there shall be no
deduction from wages.
- B. If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this order, the
employer shall pay the employee one (1) hour of pay at the

1 employee's regular rate of compensation for each workday
2 that the rest period is not provided.

3 71. California Labor Code section 226.7 provides, in pertinent part, as follows:

4 A. No employer shall require any employee to work during
5 any meal or rest period mandated by an applicable order of
6 the Industrial Welfare Commission.

7 B. If an employer fails to provide an employee a meal period
8 or rest period in accordance with an applicable order of the
9 Industrial Welfare Commission, the employer shall pay the
employee one additional hour of pay at the employee's
regular rate of compensation for each work day that the
meal or rest period is not provided.

10 72. PLAINTIFFS are informed and believe, and thereon alleges, that she and Class
11 Members systematically worked periods of more than 3 ½ hours in a workday without being
12 provided a mandated paid ten-minute, duty-free compensated rest period while in the employ of
13 DEFENDANT for every four hours worked or major fraction thereof. PLAINTIFFS are
14 informed and believe, and thereon alleges, that, at all times mentioned herein, DEFENDANT
15 maintained company policies that did not permit its employees to take a compensated rest period
16 during any given workday including workdays during which their employees worked more than
17 3 ½ hours. PLAINTIFFS are further informed and believe, and thereon alleges, that
18 DEFENDANT never paid PLAINTIFFS or any of the other affected Class Members an
19 additional one (1)-hour's wage for each rest period that was not provided as stated above.

20 73. Accordingly, DEFENDANT violated California Labor Code section 226 and
21 section 12 of Industrial Welfare Commission Wage Order 4 and/or any other applicable Wage
22 Order to their employees who worked more than 3 ½ hours in a workday. By their failure to
23 permit a compensated rest period for days on which non-exempt employees work(ed) in excess
24 of 3 ½ hours and failing to pay one hour of additional wages in lieu of each rest period not
25 provided, DEFENDANT violated California Labor Code section 226.7 and section 12 of
26 Industrial Welfare Commission Wage Order 4 and/or any other applicable Wage Order.
27 DEFENDANT is liable for one hour of additional wages at each of the affected Class Members'
28 regular rate of compensation for each workday for which a rest period was not lawfully provided.

1 74. As a result of the unlawful acts of DEFENDANT, PLAINTIFFS and Class
2 Members have been deprived of additional wages in amounts to be proven at trial and are
3 entitled to recover such amounts, plus interest and penalties thereon, attorneys' fees, and costs of
4 suit, in addition to any other relief requested below.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES IN VIOLATION OF**
7 **LABOR CODE § 2802**
8 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
9 **and DOES 1 through 50)**

10 75. The allegations of each of the foregoing paragraphs are re-alleged and
11 incorporated herein by this reference.

12 76. California Labor Code section 2802 provides, in pertinent part:

- 13 a. An employer shall indemnify his or her employee for all
14 necessary expenditures or losses incurred by the employee
15 in direct consequence of the discharge of his or her duties,
16 or of his or her obedience to the directions of the
17 employer...
- 18 b. All awards made by a court or by the Division of Labor
Standards Enforcement for reimbursement of necessary
19 expenditures under this section shall carry interest at the
20 same rate as judgments in civil actions. Interest shall
21 accrue from the date on which the employee incurred the
22 necessary expenditure or loss.
- 23 c. For purposes of this section, the term "necessary
24 expenditures or losses" shall include all reasonable costs
25 including, but not limited to, attorney's fees incurred by the
26 employee enforcing the rights granted by this section.

27 77. Specifically, DEFENDANT refused to reimburse PLAINTIFFS and the Class
28 Members for necessarily incurred motor vehicle, mileage, tool, and housing expenses incurred
during the course and scope of their employment.

78. PLAINTIFFS are informed and believe, and on that basis allege, that
DEFENDANT failed to reimburse PLAINTIFFS and the Class Members for necessarily incurred

1 motor vehicle, mileage, tool, and housing expenses incurred during the course and scope o their
2 employment with DEFENDANT.

3 79. PLAINTIFFS and the Class Members are, therefore, entitled to the unreimbursed
4 business expenses, along with interest on those expenses and attorneys' fees, as required by
5 California Labor Code section 2802 in addition to the relief requested below.

6 **SIXTH CAUSE OF ACTION**

7 **FAILURE TO FURNISH ITEMIZED STATEMENTS OF WAGES**

8 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
9 **and DOES 1 through 50)**

10 80. The allegations of each of the foregoing paragraphs are re-alleged and
11 incorporated herein by this reference.

12 81. DEFENDANT is required to maintain accurate records of, among other things,
13 wages earned at each hourly rate and the accurate number of total hours worked by
14 PLAINTIFFS and Class Members.

15 82. DEFENDANT was required to furnish such records to PLAINTIFFS and Class
16 Members semi-monthly or at the time of payment of wages and to properly itemize the paycheck
17 as required by the California Labor Code, IWC Order 4, and the California Code of Regulations,
18 including, but not limited to, California Labor Code section 226.

19 83. PLAINTIFFS are informed and believe, and on that basis allege, that
20 DEFENDANT failed to accurately maintain and furnish records of the wages earned by
21 PLAINTIFFS and Class Members.

22 84. As a direct and proximate result of DEFENDANT's failure to issue accurate,
23 itemized wages statements to PLAINTIFFS and Class Members, PLAINTIFFS and Class
24 Members suffered damage.

25 85. PLAINTIFFS and Class Members are, therefore, entitled to penalties pursuant to
26 Labor Code section 226 along with interest on those penalties and attorneys' fees, as required by
27 Labor Code section 226, in addition to the relief requested below.

28 ///

SEVENTH CAUSE OF ACTION

**FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION IN VIOLATION OF
LABOR CODE §§ 201, 202, & 203**

**(PLAINTIFF JULIAN SMOTHERS, Individually and on Behalf of the Class Members,
Against DEFENDANT and DOES 1 through 50)**

86. The allegations of each of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

87. California Labor Code section 201 provides, in pertinent part:

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately . . .”

88. California Labor Code section 202 provides, in pertinent part:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

89. California Labor Code section 203 provides, in pertinent part:

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 quit, 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 therefore is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment. 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 arises.

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1 90. PLAINTIFF JULIAN SMOTHERS' employment with DEFENDANT terminated
2 on or about September 2014. Despite said termination of employment, he did not receive
3 compensation for wages owed pursuant to California Labor Code sections 201, 202, and 203.

4 91. PLAINTIFF JULIAN SMOTHERS is informed and believes, and thereon allege,
5 that this failure by DEFENDANT to pay was willful and intentional.

6 92. PLAINTIFF JULIAN SMOTHERS is informed and believes, and on that basis
7 allege, that Class Members were terminated or have voluntarily left DEFENDANT's employ,
8 and PLAINTIFF JULIAN SMOTHERS is informed and believes, and on that basis allege, that
9 they have not received compensation for all their wages owed in accordance with the provisions
10 of California Labor Code sections 201, 202, and 203, including, but not limited to, minimum,
11 regular, overtime, and/or double time wages, premium pay for meal periods not provided, and/or
12 reimbursable expenses. PLAINTIFF JULIAN SMOTHERS is informed and believes, and on that
13 basis allege, that this failure by DEFENDANT to pay was willful and intentional.

14 93. In addition, PLAINTIFFS are informed and believe, and on that basis allege, that
15 since Plaintiff JULIAN SMOTHERS and Class Members' terminations from employment with
16 DEFENDANT, DEFENDANT has continually failed to pay the compensation that is due and
17 owing, thereby entitling them to waiting time penalties for the unpaid wages owed pursuant to
18 California Labor Code sections 201, 202, and 203.

19 94. PLAINTIFFS are informed and believe, and thereon allege, that Plaintiff JULIAN
20 SMOTHERS and Class Members did not secret or absent themselves from DEFENDANT nor
21 did they refuse to accept the earned and unpaid wages from DEFENDANT. Accordingly,
22 DEFENDANT is liable for waiting time penalties for the unpaid wages pursuant to California
23 Labor Code sections 201, 202, and 203.

24 95. In addition, Plaintiff JULIAN SMOTHERS and the Class Members have
25 incurred, and will continue to incur, legal expenses, including attorneys' fees and costs.
26 PLAINTIFFS are presently unaware of the precise amount of these fees and expenses and pray
27 for leave of this Court to amend the Complaint when the amounts are fully known. Plaintiff

28 ///

1 JULIAN SMOTHERS and Class Members are entitled to recover attorneys' fees, expenses, and
2 costs according to proof.

3 **EIGHTH CAUSE OF ACTION**

4 **VIOLATION OF UNFAIR COMPETITION LAW**

5 **(BUSINESS & PROFESSIONS CODE §17200, ET SEQ.)**

6 **(PLAINTIFFS, Individually and on Behalf of the Class Members, Against DEFENDANT**
7 **and DOES 1 through 50)**

8 96. The allegations of each of the foregoing paragraphs are re-alleged and
9 incorporated herein by this reference.

10 97. DEFENDANT has engaged and continues to engage in unfair business practices
11 in California by practicing, employing, and utilizing the employment policy of failing to pay
12 PLAINTIFFS and Class Members employment compensation as required by the California law
13 cited herein above and by violating applicable provisions of the California Labor Code,
14 including, but not limited to, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512,
15 1194, 1194.2, 1197, 2441, 2802, 2810.5, and certain provisions of the Industrial Welfare
16 Commission Wage Order 4 and/or any other applicable Wage Order, as alleged herein.
17 DEFENDANT's utilization of such illegal and unfair business practices constitutes unfair
18 competition and provides DEFENDANT with an unfair advantage over DEFENDANT'S
19 competitors.

20 98. PLAINTIFFS seek on their own behalf, on behalf of those similarly situated, and
21 on behalf of the general public full restitution and disgorgement of all employment compensation
22 wrongfully withheld, as necessary and according to proof, to restore any and all monies
23 withheld, acquired, and/or converted by DEFENDANT by means of the unfair and unlawful
24 practices complained of herein. The restitution and disgorgement requested includes all wages
25 earned and unpaid, including interest thereon. The acts complained of herein occurred, at least in
26 part, within the last four (4) years preceding the filing of the Complaint in this action and
27 continue to the present.

28 ///

1 99. PLAINTIFFS are informed and believe, and on that basis allege, that at all times
2 herein mentioned DEFENDANT has engaged in unlawful and unfair business practices as
3 proscribed by California Business and Professions Code 17200 *et seq.* by depriving
4 PLAINTIFFS and Class Members of the minimum working conditions and standards due to
5 them under the California Labor Code and IWC Wage Orders as identified herein.

6 100. California Business and Professions Code 17200 *et seq.* prohibits acts of unfair
7 competition, which mean and include any unlawful, unfair, or fraudulent business act or practice.
8 Under California law, wages unlawfully withheld from an employee constitutes an unfair
9 business act, entitling PLAINTIFFS and Class Members to a restitution remedy authorized by
10 California Business and Professions Code section 17203. PLAINTIFFS and Class Members and
11 the general public are, therefore, entitled to the relief requested below.

12 101. In addition, PLAINTIFFS have incurred, on behalf of themselves, and on behalf
13 of the Class Members, and will continue to incur, legal expenses and attorneys' fees.
14 PLAINTIFFS, on behalf of themselves, and on behalf of the Class Members, are presently
15 unaware of the precise amount of these fees and expenses and pray for leave of this Court to
16 amend the Complaint when the amounts are fully known. Pursuant to California Labor Code
17 sections 512 and California Code of Civil Procedure section 1021.5, PLAINTIFFS and Class
18 Members are entitled to recover attorneys' fees, expenses, and costs according to proof.

19 **NINTH CAUSE OF ACTION**

20 **IMPERMISSIBLE WAGE DEDUCTIONS IN VIOLATION OF LABOR CODE**

21 **§§ 221, 223, & 224**

22 **(PLAINTIFFS, Individually and on Behalf of All Class Members, Against**
23 **DEFENDANT and DOES 1 through 50)**

24 102. The allegations of each of the foregoing paragraphs are re-alleged and
25 incorporated herein by this reference.

26 103. At all relevant times, DEFENDANT was subject to the provisions of the
27 California Labor Code mentioned herein.

28 104. California Labor Code § 221 provides in pertinent part:

1 It shall be unlawful for any employer to collect or receive from any employee any
2 part of wages theretofore paid by said employer to said employee.

3 105. California Labor Code § 223 provides in pertinent part

4
5 Where any statute or contract requires an employer to maintain the designated
6 wage scale, it shall be unlawful to secretly pay a lower wage while
purporting to pay the wage designated by statute or contract.

7 106. At all relevant times, PLAINTIFFS allege, on information and belief, that
8 DEFENDANT unlawfully deducted portions of PLAINTIFFS' and other California Class
9 Members' wages that were already earned for trivial matters such as failing to correct deficient
10 installation jobs, failing to report to work, failing to respond to phone calls, and refusing to
11 accept jobs, among other reasons.

12 107. At all relevant times, PLAINTIFFS allege, on information and belief, that
13 DEFENDANT'S unlawful deductions amounted to a deduction and/or rebate of wages already
14 earned by PLAINTIFFS and other California Class Members and was not legally authorized by
15 any lawful regulation or contract under the laws of California.

16 108. At all relevant times, PLAINTIFFS allege, on information and belief, that
17 DEFENDANT'S unlawful deductions were made intentionally, willfully, and improperly insofar
18 as DEFENDANT is engaged in business in California with access to the California Labor Code
19 and the provisions contained therein.

20 109. At all relevant times, PLAINTIFFS allege, on information and belief, that as
21 result of DEFENDANT's wrongful conduct, PLAINTIFFS and all California Class Members
22 have been damaged in an amount to be established.

23 110. In addition, PLAINTIFFS and the California Class Members have incurred, and
24 will continue to incur, legal expenses, including attorneys' fees and costs. PLAINTIFFS are
25 presently unaware of the precise amount of these fees and expenses and pray for leave of this
26 Court to amend the Complaint when the amounts are fully known. PLAINTIFFS and California
27 Class Members are entitled to recover attorneys' fees, expenses, and costs according to proof.

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TENTH CAUSE OF ACTION

**FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF 29 U.S.C. § 206
(PLAINTIFFS, Individually and on Behalf of All FLSA Class Members, Against
DEFENDANT and DOES 1 through 50)**

111. The allegations of each of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

112. At all relevant times, DEFENDANT was subject to the provisions of the United States Code mentioned herein.

113. At all relevant times, PLAINTIFFS allege, on information and belief, that they and the other FLSA Class Members are and/or were engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce for purposes of 29 U.S.C. section 206(a), such that they were entitled to minimum wages for all hours worked.

114. 29 U.S.C. section 207(a)(1) provides in pertinent part

Every employer shall pay top each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production og goods for commerce, wages at the following rates:

(1) Except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day;

115. At all relevant times, PLAINTIFFS allege, on information and belief, that they and other FLSA Class Members were required to perform piece rate work, without separate hourly compensation for hours worked, rest periods, “on-call” time, or other times during which PLAINTIFFS and other FLSA Class Members were subject to the control of DEFENDANT. PLAINTIFFS allege, on information and belief, that this caused the wages of themselves and other FLSA Class Members to fall below minimum wage when averaged over the total amount of time worked for DEFENDANTS.

1 116. At all relevant times, PLAINTIFFS allege, on information and belief, that they
2 and other FLSA Class Members were not reimbursed for necessary expenses and losses incurred
3 in the direct course of their duties. PLAINTIFFS allege, on information and belief, that this
4 caused the wages of themselves and other FLSA Class Members to fall below minimum wage
5 when averaged over the total amount of time worked for DEFENDANTS, and deducting for
6 these expenses.

7 117. At all relevant times, PLAINTIFFS allege, on information and belief, that they
8 and other FLSA Class Members were not exempt from the requirement to be paid at least the
9 federal minimum wage throughout the relevant time period.

10 118. At all relevant times, PLAINTIFFS allege, on information and belief, that
11 DEFENDANT intentionally, willfully, and improperly failed to pay minimum wages to FLSA
12 Class Members in violation of the FLSA.

13 119. At all relevant times, PLAINTIFFS allege, on information and belief, that
14 DEFENDANT's conduct was willful because DEFENDANT knew PLAINTIFFS and FLSA
15 Class Members were entitled to be paid at least the Federal minimum wage throughout the
16 relevant time period, yet DEFENDANT chose not to pay them in accordance thereto.

17 120. At all relevant times, PLAINTIFFS allege, on information and belief, that as
18 result of DEFENDANT's wrongful conduct, PLAINTIFFS and all FLSA Class Members have
19 been damaged in an amount to be established.

20 121. On behalf of themselves and on behalf of all similarly situated FLSA Class
21 Members who opt into this action, PLAINTIFFS request recovery of all unpaid wages, including
22 unpaid minimum wages, liquidated damages, interest, attorney fees and costs of suit pursuant to
23 29 U.S.C. section 216(b) against DEFENDANT, in an amount to be established.

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ELEVENTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME IN VIOLATION OF 29 U.S.C. § 207

**(PLAINTIFFS, Individually and on Behalf of All FLSA Class Members, Against
DEFENDANT and DOES 1 through 50)**

122. The allegations of each of the foregoing paragraphs are re-alleged and incorporated herein by this reference.

123. At all relevant times, DEFENDANT was subject to the provisions of the United States Code mentioned herein.

124. At all relevant times, PLAINTIFFS allege, on information and belief, that they and the other FLSA Class Members are and/or were engaged in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce for purposes of 29 U.S.C. section 207(a)(1), such that they were entitled to overtime pay for a workweek longer than forty hours at a rate not less than one and one-half times the regular rate at which they are/were employed.

125. 29 U.S.C. section 207(a)(1) provides in pertinent part:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

126. DEFENDANT failed to properly calculate the regular rate of pay of PLAINTIFFS and other FLSA Class Members by failing to include all items of remuneration in the calculation of their regular rate of pay, including but not limited to non-discretionary bonuses, and therefore failed to pay PLAINTIFF and other FLSA Class Members with all overtime wages to which they were entitled under 29 U.S.C. section 207(a)(1).

127. DEFENDANT intentionally, willfully, and improperly failed to pay overtime wage to PLAINTIFFS and FLSA Class Members in violation of the FLSA.

1 128. DEFENDANT’S conduct was willful because DEFENDANT knew that
2 PLAINTIFF and FLSA Class Members were entitled to be paid at least one and one-half times
3 their regular rate of pay for all hours worked over forty hours per workweek at all times relevant
4 to the FLSA CLASS, yet DEFENDANT chose not to pay them in accordance thereto.

5 129. As a direct and proximate result of DEFENDANT’S wrongful conduct,
6 PLAINTIFFS and all FLSA Class Members have been damages in amounts to be proven at trial.

7 130. On behalf of themselves and all similarly situated FLSA Class Members who opt
8 into this action, PLAINTIFFS request recovery of all unpaid overtime wages, liquidated
9 damages, interest, and attorneys fees and costs of suit pursuant to 29 U.S.C. section 216(b) in an
10 amount to be proven at trial.

11 **TWELTH CAUSE OF ACTION**

12 **CIVIL PENALTIES FOR FAILURE TO PAY MINIMUM WAGE FOR EACH HOUR**

13 **WORKED**

14 **(PLAINTIFFS, Individually and on Behalf of All Similarly Situated Aggrieved Employees,**
15 **Against DEFENDANT and DOES 1 through 50)**

16 131. The allegations of each of the foregoing paragraphs are re-alleged and
17 incorporated herein by this reference.

18 132. At all relevant times, DEFENDANT was subject to the provisions of the
19 California Labor Codes mentioned herein.

20 133. California Labor Code section 2699(a) specifically provides for a private right of
21 action to recover penalties for violations of the Labor Code:

22 Notwithstanding any other provision of law, any provision of this
23 code that provides for a civil penalty to be assessed and collected
24 by the Labor and Workforce Development Agency or any of its
25 departments, divisions, commissions, boards, agencies, or
26 employees, for a violation of this code, may, as an alternative, be
27 recovered through a civil action brought by an aggrieved employee
28 on behalf of himself or herself and other current or former
employees.

28 134. California Labor Code section 2699.3(a) states:

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A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation. 2(A) The agency shall notify the employer and the aggrieved employee or the representative by certified mails that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

135. PLAINTIFFS have exhausted their administrative remedies pursuant to California Labor Code section 2699.3 in that PLAINTIFFS gave written notice of their claims California Labor Code section 2699 *et seq.* to DEFENDANT and to the California Labor and Workforce Development Agency on or about March 21, 2016, and the California Labor and Workforce Development Agency failed to respond to PLAINTIFF's notice within thirty-three days.

136. PLAINTIFFS are entitled to recover these penalties for themselves and other current or former aggrieved employees through a civil action filed on their own behalf. These penalties are in addition to all other remedies permitted by law.

137. DEFENDANT set the policies for, established, controlled, consented to, approved and/or ratified the non-payment of the wages due to PLAINTIFFS and other current and former aggrieved employees in violation of the California Labor Code and the applicable Wage Order.

138. DEFENDANT failed to comply with California Labor Code sections, 1194, 1194.2 and 1197 by failing to pay PLAINTIFFS the California minimum wage due PLAINTIFFS for each hour worked. PLAINTIFFS are therefore entitled to the penalties set forth in the Cal. Labor Code, including but not limited to the penalties set forth California Labor Code sections 210, 225.5, 558, and 1197.1, on behalf of themselves and other current and former aggrieved employees of DEFENDANT, for each and every pay period that DEFENDANT

1 violated California Labor Code sections, 1194, 1194.2 and 1197, or to those penalties set forth in
2 California Labor Code sections 2699(f) if it is determined that there is no established civil
3 penalty for violation of the foregoing provisions of the California Labor Code.

4 139. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
5 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
6 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

7 **THIRTEENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR FAILURE TO PAY OVERTIME**

9 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
10 **Against DEFENDANT and DOES 1 through 50)**

11 140. The allegations of each of the foregoing paragraphs are re-alleged and
12 incorporated herein by this reference.

13 141. At all relevant times, DEFENDANT was subject to the provisions of the
14 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

15 142. PLAINTIFFS have exhausted their administrative remedies pursuant to California
16 Labor Code section 2699.3.

17 143. DEFENDANT failed to comply with California Labor Code section 510 by
18 failing to pay PLAINTIFFS and the other Class Members at the correct hourly rate for those
19 hours worked in excess of eight (8) in a workday, in excess of forty (40) in a workweek, and/or
20 for hours worked on the seventh day of a workweek as required under California law.
21 PLAINTIFFS are therefore entitled to the penalties set forth in the California Labor Code,
22 including but not limited to the penalties set forth in California Labor Code sections 210, 225.5,
23 and 558 on behalf of themselves and other current and former aggrieved employees of
24 DEFENDANT, for each and every pay period that DEFENDANT violated California Labor
25 Code section 510, or to those penalties set forth in California Labor Code section 2699(f) if it is
26 determined that there is no established civil penalty for violation of the foregoing provisions of
27 the California Labor Code.

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1 144. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
2 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
3 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

4 145. Pursuant to California Labor Code section 218.6, in any action brought for the
5 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
6 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
7 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFFS
8 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
9 interest.

10 **FOURTEENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS**

12 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
13 **Against DEFENDANT and DOES 1 through 50)**

14 146. The allegations of each of the foregoing paragraphs are re-alleged and
15 incorporated herein by this reference.

16 147. At all relevant times, DEFENDANT was subject to the provisions of the
17 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

18 148. PLAINTIFFS have exhausted their administrative remedies pursuant to California
19 Labor Code section 2699.3.

20 149. DEFENDANT failed to comply with California Labor Code sections 226.7 and
21 512 and Section 11 of the Industrial Welfare Commission Wage Order No. 4 by failing to
22 provide PLAINTIFFS and other aggrieved employees with all meal periods to which
23 PLAINTIFFS and other aggrieved employees were entitled under California law. PLAINTIFFS
24 are therefore entitled to the penalties set forth in the California Labor Code, including but not
25 limited to the penalties set forth in California Labor Code sections 210, 225.5, and 558 on behalf
26 of themselves and other current and former aggrieved employees of DEFENDANT, for each and
27 every pay period that DEFENDANT violated California Labor Code sections 226.7 and 512, or
28 to those penalties set forth in California Labor Code section 2699(f) if it is determined that there

1 is no established civil penalty for violation of the foregoing provisions of the California Labor
2 Code.

3 150. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
4 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
5 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

6 151. Pursuant to California Labor Code section 218.6, in any action brought for the
7 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
8 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
9 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFFS
10 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
11 interest.

12 **FIFTEENTH CAUSE OF ACTION**

13 **CIVIL PENALTIES FOR FAILURE TO PROVIDE REST PERIODS**

14 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
15 **Against DEFENDANT and DOES 1 through 50)**

16 152. The allegations of each of the foregoing paragraphs are re-alleged and
17 incorporated herein by this reference.

18 153. At all relevant times, DEFENDANT was subject to the provisions of the
19 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

20 154. PLAINTIFFS have exhausted their administrative remedies pursuant to California
21 Labor Code section 2699.3.

22 155. DEFENDANT failed to comply with California Labor Code sections 226.7 and
23 Section 12 of the Industrial Welfare Commission Wage Order No. 4 by failing to provide
24 PLAINTIFFS and other aggrieved employees with all rest periods to which PLAINTIFFS and
25 other aggrieved employees were entitled under California law. PLAINTIFFS are therefore
26 entitled to the penalties set forth in the California Labor Code, including but not limited to the
27 penalties set forth in California Labor Code sections 210, 225.5, and 558 on behalf of themselves
28 and other current and former aggrieved employees of DEFENDANT, for each and every pay

1 period that DEFENDANT violated California Labor Code sections 226.7, or to those penalties
2 set forth in California Labor Code section 2699(f) if it is determined that there is no established
3 civil penalty for violation of the foregoing provisions of the California Labor Code.

4 156. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
5 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
6 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

7 157. Pursuant to California Labor Code section 218.6, in any action brought for the
8 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
9 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
10 annum], which shall accrue from the date that the wages are due and payable[.]” PLAINTIFFS
11 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
12 interest.

13 **SIXTEENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES FOR FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**
15 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
16 **Against DEFENDANT and DOES 1 through 50)**

17 158. The allegations of each of the foregoing paragraphs are re-alleged and
18 incorporated herein by this reference.

19 159. At all relevant times, DEFENDANT was subject to the provisions of the
20 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

21 160. PLAINTIFFS have exhausted their administrative remedies pursuant California
22 Labor Code section 2699.3.

23 161. DEFENDANT failed to comply with California Labor Code section 226 by
24 failing to provide PLAINTIFFS and other aggrieved employees with itemized wage statements
25 to which PLAINTIFFS and other aggrieved employees were entitled under California law.
26 PLAINTIFFS are therefore entitled to the penalties set forth in the California Labor Code,
27 including but not limited to the penalties set forth in California Labor Code sections 226.3 and
28 1174.5 on behalf of themselves and other current and former aggrieved employees of

1 DEFENDANT, for each and every pay period that DEFENDANT violated California Labor
2 Code sections 226 and 1174, or to those penalties set forth in California Labor Code section
3 2699(f) if it is determined that there is no established civil penalty for violation of the foregoing
4 provisions of the California Labor Code.

5 162. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
6 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
7 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

8 163. Pursuant to California Labor Code section 218.6, in any action brought for the
9 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
10 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
11 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
12 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
13 interest.

14 **SEVENTEENTH CAUSE OF ACTION**

15 **CIVIL PENALTIES FOR FAILURE TO MAINTAIN ADEQUATE AND ACCURATE**
16 **PAYROLL RECORDS**

17 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
18 **Against DEFENDANT and DOES 1 through 50)**

19 164. The allegations of each of the foregoing paragraphs are re-alleged and
20 incorporated herein by this reference.

21 165. At all relevant times, DEFENDANT was subject to the provisions of the
22 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

23 166. PLAINTIFFS have exhausted their administrative remedies pursuant to California
24 Labor Code section 2699.3.

25 167. DEFENDANT failed to comply with California Labor Code sections 221, 224,
26 226 and 1174 by failing to provide PLAINTIFFS and other aggrieved employees with itemized
27 wage statements to which PLAINTIFFS and other aggrieved employees were entitled under
28 California law. DEFENDANT's failure to provide accurate wage statements also resulted in their

1 failure to maintain complete and accurate payroll records in accordance with California Labor
2 Code section 1174. PLAINTIFFS are therefore entitled to the penalties set forth in the California
3 Labor Code, including but not limited to the penalties set forth in California Labor Code section
4 1174.5 on behalf of themselves and other current and former aggrieved employees of
5 DEFENDANT, for each and every pay period that DEFENDANT violated California Labor
6 Code section 1174, or to those penalties set forth in California Labor Code section 2699(f) if it is
7 determined that there is no established civil penalty for violation of the foregoing provisions of
8 the California Labor Code.

9 168. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
10 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
11 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

12 169. Pursuant to California Labor Code section 218.6, in any action brought for the
13 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
14 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
15 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
16 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
17 interest.

18 **EIGHTEENTH CAUSE OF ACTION**

19 **CIVIL PENALTIES FOR FAILURE TO ISSUE NOTICE OF PAY**

20 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
21 **Against DEFENDANT and DOES 1 through 50)**

22 170. The allegations of each of the foregoing paragraphs are re-alleged and
23 incorporated herein by this reference.

24 171. At all relevant times, DEFENDANT was subject to the provisions of the
25 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

26 172. PLAINTIFFS have exhausted their administrative remedies pursuant to California
27 Labor Code section 2699.3.

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1 173. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT
2 failed to comply with California Labor Code section 2810.5 by failing to provide to
3 PLAINTIFFS and other aggrieved employees a written notice, in the language the employer
4 normally uses to communicate employment-related information to the employee, containing the
5 following information:

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- 7 (a) The rate or rates of pay and basis thereof, whether paid by
8 the hour, shift, day, week, salary, piece, commission, or
9 otherwise, including any rates for overtime, as applicable;
 - 10 (b) Allowances, if any, claimed as part of the minimum wage,
11 including meal or lodging allowances;
 - 12 (c) The regular payday designated by the employer in
13 accordance with the requirements of this code;
 - 14 (d) The name of the employer, including any "doing business
15 as" names used by the employer;
 - 16 (e) The physical address of the employer's main office or
17 principal place of business, and a mailing address, if
18 different;
 - 19 (f) The telephone number of the employer;
 - 20 (g) The name, address, and telephone number of the
21 employer's workers' compensation insurance carrier;
 - 22 (h) That an employee: may accrue and use sick leave; has a
23 right to request and use accrued paid sick leave; may not be
24 terminated or retaliated against for using or requesting the
25 use of accrued paid sick leave; and has the right to file a
26 complaint against an employer who retaliates.

27 174. PLAINTIFFS are therefore entitled to the penalties set forth in the California
28 Labor Code for each and every pay period that DEFENDANT violated California Labor Code
section 2810.5, or to those penalties set forth in California Labor Code section 2699(f) if it is
determined that there is no established civil penalty for violation of the foregoing provisions of
the California Labor Code.

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1 175. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
2 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
3 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

4 176. Pursuant to California Labor Code section 218.6, in any action brought for the
5 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
6 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
7 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
8 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
9 interest.

10 **NINETEENTH CAUSE OF ACTION**

11 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE AND PAYABLE TWICE**
12 **EACH CALENDAR MONTH**

13 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
14 **Against DEFENDANT and DOES 1 through 50)**

15 177. The allegations of each of the foregoing paragraphs are re-alleged and
16 incorporated herein by this reference.

17 178. At all relevant times, DEFENDANT was subject to the provisions of the
18 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

19 179. PLAINTIFFS have exhausted their administrative remedies pursuant to California
20 Labor Code section 2699.3.

21 180. DEFENDANT failed to comply with California Labor Code section 204 by
22 failing to timely pay twice during each calendar month all wages owed to PLAINTIFFS and
23 other aggrieved employees were entitled. PLAINTIFFS are therefore entitled to the penalties set
24 forth in the California Labor Code, including but not limited to the penalties set forth in
25 California Labor Code section 210 on behalf of themselves and other current and former
26 aggrieved employees of DEFENDANT, for each and every pay period that DEFENDANT
27 violated California Labor Code section 204, or to those penalties set forth in California Labor

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1 Code section 2699(f) if it is determined that there is no established civil penalty for violation of
2 the foregoing provisions of the California Labor Code.

3 181. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
4 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
5 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

6 182. Pursuant to California Labor Code section 218.6, in any action brought for the
7 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
8 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
9 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
10 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
11 interest.

12 **TWENTITH CAUSE OF ACTION**

13 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE UPON DEMAND**

14 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
15 **Against DEFENDANT and DOES 1 through 50)**

16 183. The allegations of each of the foregoing paragraphs are re-alleged and
17 incorporated herein by this reference.

18 184. At all relevant times, DEFENDANT was subject to the provisions of the
19 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

20 185. PLAINTIFFS have exhausted their administrative remedies pursuant to Cal.
21 Labor Code section 2699.3.

22 186. DEFENDANT failed to comply with California Labor Code section 216 by,
23 having the ability to pay, willfully refusing to pay wages due and payable upon demand, and/or
24 denying the amount or validity thereof, or that the same is due, with intent to secure for itself, or
25 other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress,
26 hinder, delay, or defraud PLAINTIFFS and other aggrieved employees to whom such
27 indebtedness is due. PLAINTIFFS are therefore entitled to the penalties set forth in the
28 California Labor Code, including but not limited to the penalties set forth in California Labor

1 Code section 225.5, on behalf of themselves and other current and former aggrieved employees
2 of DEFENDANT, for each and every pay period that DEFENDANT violated California Labor
3 Code section 216, or to those penalties set forth in California Labor Code section 2699(f) if it is
4 determined that there is no established civil penalty for violation of the foregoing provisions of
5 the California Labor Code.

6 187. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
7 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
8 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

9 188. Pursuant to California Labor Code section 218.6, in any action brought for the
10 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
11 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
12 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
13 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
14 interest.

15 **TWENTY-FIRST CAUSE OF ACTION**

16 **CIVIL PENALTIES FOR FAILURE TO PAY WAGES DUE UPON TERMINATION**
17 **(PLAINTIFFS, Individually and on Behalf of Current and Former Aggrieved Employees,**
18 **Against DEFENDANT and DOES 1 through 50)**

19 189. The allegations of each of the foregoing paragraphs are re-alleged and
20 incorporated herein by this reference.

21 190. At all relevant times, DEFENDANT was subject to the provisions of the
22 California Labor Codes and Industrial Welfare Commission Wage Orders mentioned herein.

23 191. PLAINTIFFS have exhausted their administrative remedies pursuant to Cal.
24 Labor Code section 2699.3.

25 192. DEFENDANT failed to comply with California Labor Code section sections 201,
26 202 and 203 by failing to provide Plaintiff JULIAN SMOTHERS and other former aggrieved
27 employees with wages due upon termination of their employment. Plaintiff JULIAN
28 SMOTHERS is therefore entitled to the penalties set forth in California Labor Code section 256

1 on behalf of herself and other current and former aggrieved employees of DEFENDANT, for
2 each and every pay period that DEFENDANT violated California Labor Code sections 201
3 through 203, or to those penalties set forth in California Labor Code section 2699(f) if it is
4 determined that there is no established civil penalty for violation of the foregoing provisions of
5 the California Labor Code.

6 193. In addition, PLAINTIFFS seek an award of reasonable attorneys' fees and costs
7 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who
8 prevails in any action shall be entitled to an award of reasonable attorneys' fees and costs."

9 194. Pursuant to California Labor Code section 218.6, in any action brought for the
10 nonpayment of wages, the Court shall award interest on all due and unpaid wages at the rate of
11 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
12 annum], which shall accrue from the date that the wages are due and payable[.] PLAINTIFFS
13 and current and former aggrieved employees of DEFENDANT are therefore entitled to said
14 interest.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFFS pray as follows:

17 195. For the Court to determine that the aforementioned Causes of Action may be
18 maintained as a Class Action;

19 196. For the Court to determine that the attorneys appearing in the above caption may
20 be named as Class Counsel;

21 197. For restitutionary and compensatory damages in an amount according to proof
22 and with interest thereon, including, but not limited to unpaid minimum, regular, overtime,
23 and/or double time wages;

24 198. For DEFENDANT be found to have engaged in unfair competition in violation of
25 California Business and Professions Code section 17200 *et seq.*;

26 199. For DEFENDANT be ordered and enjoined to make restitution to PLAINTIFFS
27 and the Class Members due to their unfair competition, including disgorgement of their

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1 wrongfully obtained revenues, earnings, profits, compensation, and benefits pursuant to
2 California Business and Professions Code sections 17203 and 17204;

3 200. For DEFENDANT be enjoined from continuing the unlawful course of conduct
4 alleged herein;

5 201. For DEFENDANT further be enjoined to cease and desist from unfair
6 competition in violation of the California Business and Professions Code section 17200 *et seq.*;

7 202. For DEFENDANT be enjoined from further acts of restraint of trade or unfair
8 competition;

9 203. For payment of penalties for non-payment of wages to PLAINTIFFS and the
10 Class Members in accordance with California Labor Code sections 201, 202, and 203 and/or
11 California Business and Professions Code section 17202;

12 204. For penalties pursuant to Labor Code section 2699 to PLAINTIFFS on behalf of
13 themselves and all other current and former aggrieved employees of DEFENDANT;

14 205. For interest, attorneys' fees, and costs of suit under California Labor Code
15 sections 218.6, 226, 1194, 2699 and California Code of Civil Procedure section 1021.5;

16 206. That DEFENDANT be ordered to show cause why it should not be enjoined and
17 ordered to comply with the applicable California Labor Code sections and IWC Wage Orders
18 related to payment of wages;

19 207. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

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2 PLAINTIFFS, on behalf of themselves and all similarly situated Class Members, hereby
3 demand trial by jury of Causes of Action One through Twenty-One to the extent authorized by
4 law.

5
6 Dated: September 24, 2019

SUTTON HAGUE LAW CORPORATION
A California Professional Corporation

7
8
9 By: _____


JARED HAGUE
S. BRETT SUTTON
Attorneys for Plaintiffs
JULIAN SMOTHERS and ASA DHADDA