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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 ANED LOPEZ, CRISTIAN ALAS, on
 16 Behalf of Themselves and Others Similarly
 Situated,

17 Plaintiffs,

19 v.

20 P.W. STEPHENS ENVIRONMENTAL,
 INC., a Delaware Corporation, and DOES 1-
 21 10 inclusive,

22 Defendants.

Case No. 3:15-CV-03579-JD

- FIRST AMENDED COMPLAINT FOR:
- (1) FLSA–FAILURE TO PAY MINIMUM WAGE;
 - (2) FLSA–FAILURE TO PAY OVERTIME;
 - (3) CAL LAW-FAILURE TO PAY MINIMUM WAGE;
 - (4) CAL LAW--FAILURE TO PAY FOR ALL HOURS WORKED;
 - (5) CAL LAW - FAILURE TO PAY OVERTIME COMPENSATION;
 - (6) CAL LAW--REPORTING TIME PAY;
 - (7) CAL LAW -FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS;
 - (8) CAL LAW-FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;
 - (9) CAL LAW-WAITING TIME PENALTIES;
 - (10) CAL LAW – ACCURATE PAY STATEMENT PENALTIES;
 - (11) PENALTIES UNDER CALIFORNIA PRIVATE ATTORNEY GENERAL ACT;
 - and,
 - (12) CAL LAW-VIOLATIONS OF THE UNFAIR COMPETITION LAW.

DEMAND FOR JURY TRIAL

1 Plaintiffs Aned Lopez and Cristian Alas, on behalf of themselves and all others similarly
2 situated, complain and allege as follows:

3 **I. JURISDICTION**

4 1. This Court has original jurisdiction pursuant to:

- 5 (a) the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), and 28 U.S.C. § 1331;
6 (b) the Court’s supplemental jurisdiction, 28 U.S.C. § 1367.

7 **II. VENUE AND INTRADISTRICT ASSIGNMENT**

8 2. Because a substantial part of the events or omissions giving rise to Plaintiffs’ claims
9 occurred in Alameda County, venue is proper in this District pursuant to 28 U.S.C. § 1391(b), and
10 assignment to the San Francisco Division or Oakland Division is proper pursuant to Local Rule 3-
11 2(d).

12 **III. INTRODUCTION**

13 3. Plaintiffs bring collective and class action wage and hour claims on behalf of
14 themselves and other similarly situated Laborers and Drivers employed in California by Defendant
15 P.W. Stephens Environmental, Inc. (“P.W. Stephens”) and Does 1 through 10 (“Doe Defendants,”
16 and jointly with P.W. Stephens, “Defendants”). P.W. Stephens is an environmental remediation
17 contracting company that provides asbestos abatement and other environmental remediation
18 services to residences and commercial buildings throughout the state of California. Plaintiffs and
19 the other Laborers and Drivers have performed this remediation work, removing asbestos, lead
20 paint, and mold from residential and commercial buildings and completing related construction
21 work.

22 4. Defendants regularly required Plaintiffs and other similarly situated Laborers to
23 report to work at P.W. Stephens’ facilities at or prior to 7:00 a.m., and to work long hours usually
24 well in excess of eight (8) hours per day and forty (40) hours in a week. Defendants have also
25 required that Plaintiffs and other similarly situated Laborers ride in company vehicles to and from
26 jobsites. Defendants, however, have had a policy and practice of only paying Laborers for hours
27 worked starting at a uniform shift start time set by Defendants – typically 7 a.m. – and ending when
28 Plaintiffs and other similarly situated Laborers leave the last jobsite each workday

1 5. Defendants have also designated certain Laborers – including Plaintiffs – to be
2 Drivers. Defendants’ Drivers are required to drive and maintain the company’s vehicles as part of
3 their job duties. Plaintiffs, and other similarly situated Drivers, store company vehicles at their
4 homes; pick up and drop off designated supervisors and other workers on their way to and/or from
5 Defendant P.W. Stephens’ offices and the jobsites, respectively; transport tools, supplies, and other
6 materials; and maintain and clean company vehicles. Drivers also pay out of pocket for cleaning the
7 company vehicles, for which they are not reimbursed by Defendant.

8 6. Defendants have committed additional wage and hour violations, including: failing
9 to pay reporting time, failing to provide duty-free meal periods, and failing to pay all wages due
10 upon termination of employment. Furthermore, Defendants have failed to maintain accurate records
11 of all hours worked and provide accurate wage statements.

12 7. The collective action (“FLSA COLLECTIVE ACTION”) asserts violations of the
13 FLSA’s minimum and overtime wage provision. The class action (“RULE 23 CLASS ACTION”) asserts violations of California’s Labor Code, wage orders, California Labor Code Private Attorney
14 General Act (“PAGA”) and Unfair Competition Law (“UCL”), California Business and Professions
15 Code section 17200, *et seq.*, arising from Defendants’ unlawful conduct, including: failure to pay
16 minimum wages, overtime wages, regular wages for all hours worked, and reporting time pay;
17 failure to provide 30-minute meal periods free of all duties; failure to reimburse for business
18 expenses; and failure to pay all wages due upon separation of employment. Plaintiffs seek, on
19 behalf of themselves and those similarly situated, back wages, waiting time penalties, penalties
20 related to the failure to provide accurate pay statements and maintain accurate records, civil
21 penalties under PAGA, restitution, disgorgement, interest thereon, and attorneys’ fees and costs.
22

23 8. After entering into a “Structured Negotiations and Tolling Agreement” (“Tolling
24 Agreement”) to pursue pre-lawsuit negotiations with Plaintiff Lopez to resolve his claims and those
25 alleged herein on behalf of the Rule 23 Class, Defendant P.W. Stephens sought and obtained release
26 and waiver agreements from individual Laborers – both current and former employees – in
27 exchange for \$500 each. Those agreements were obtained without notice to Plaintiff Lopez or his
28 counsel, utilizing and disclosing to the putative class members confidential information shared

1 pursuant to the Tolling Agreement, and misrepresenting to putative class members that they were
2 extinguishing their FLSA claims, among other claims that cannot be released or waived through a
3 private settlement agreement that is not approved by a court or U.S. Department of Labor.

4 **IV. PARTIES**

5 9. Plaintiff Aned Lopez resides, and at all times relevant to this Complaint resided, in
6 Alameda County, California. Plaintiff Lopez was employed as a Laborer and Driver by Defendants
7 from approximately July 11, 2011 to approximately July 19, 2013, when he was summarily
8 terminated. During most of his tenure with Defendants, Plaintiff Lopez performed asbestos
9 abatement, lead removal, mold remediation and other related construction work, and also drove a
10 company vehicle. Plaintiff Lopez's worked out of Defendants' Fremont and Hayward, California
11 locations, from where he was dispatched to perform work in Alameda County and in other counties
12 throughout Northern California. On or about January 7, 2014, Plaintiff Lopez filed an individual
13 wage claim with the California Labor Commissioner alleging Defendant P.W. Stephens' failure to
14 pay wages owed, among other claims. That claim has now been withdrawn.

15 10. Plaintiff Cristian Alas resides, and at all times relevant to this Complaint resided, in
16 Contra Costa County, California. Plaintiff Alas was employed as a Laborer, Foreman, and Driver
17 by Defendants from approximately February 2013 to approximately October 28, 2014, when he was
18 terminated. During most of his tenure with Defendants, Plaintiff Alas performed asbestos
19 abatement, lead removal, mold remediation and other related construction work, supervisory duties
20 at jobsites, and also drove a company vehicle. Plaintiff Alas worked out of Defendants' Hayward,
21 California locations, from where he was dispatched to perform work in Alameda County and in
22 other counties throughout Northern California.

23 11. Plaintiffs are informed and believe and thereon allege that Defendant P.W. Stephens
24 is a Delaware corporation, headquartered in Huntington Beach, California, and that it is an
25 environmental abatement contractor that provides asbestos abatement, lead removal, mold
26 remediation, and bed bug extermination, among other services, for residences and commercial
27 buildings. In addition to its Huntington Beach headquarters, Defendant P.W. Stephens maintains
28 several branch offices located throughout California, including in Hayward and Fremont, and does

1 business systematically and continuously in California. Defendant P.W. Stephens is, and at all
2 times relevant to this Complaint was, an employer covered by the FLSA and California's Industrial
3 Welfare Commission Wage Order 16 ("Wage Order"), General Minimum Wage Order, and Labor
4 Code.

5 12. Plaintiffs are ignorant of the true names and capacities of Doe Defendants and
6 therefore sue them by fictitious names. Plaintiffs will amend this Complaint to allege the true
7 names and capacities of the Doe Defendants when ascertained. Plaintiffs are informed and believe,
8 and thereon allege, that each of the Doe Defendants is responsible in some manner for the
9 occurrences alleged herein. Plaintiffs are further informed and believe, and allege thereon, that at
10 all relevant times, Doe Defendants have held executive positions with Defendants, and/or have
11 acted on behalf of Defendants by exercising decision-making responsibility for and by establishing
12 unlawful wage and hour practices or policies for Defendants. Plaintiffs are informed and believe,
13 and on that basis allege, that at all times relevant to this Complaint, Doe Defendants, and each of
14 them, acted as an employer of Plaintiffs and the members of the Class, defined below, within the
15 definition of the FLSA and California's Wage Order, General Minimum Wage Order, and Labor
16 Code.

17 **V. STATEMENT OF FACTS**

18 13. Defendants have paid Plaintiffs and other similarly situated Laborers and Drivers an
19 hourly rate of pay that has exceeded the FLSA and California minimum wage rates. Plaintiffs,
20 while working as a Laborer and as a Driver, and similarly situated Laborers have regularly worked
21 over eight (8) hours in a day and over forty (40) hours in a week. Plaintiffs regularly worked in
22 excess of ten (10) hours in a day and between fifty (50) or sixty (60) hours in a week, both as a
23 Laborer and as a Driver. Other Laborers have worked similarly long hours. Defendants have
24 regularly paid Plaintiffs and the other Laborers overtime compensation at the rate of one and one-
25 half times their regularly hourly rate. However, Defendants have had a policy and practice of not
26 paying Plaintiffs and other similarly situated Laborers for all hours worked, because, as follows,
27 they have treated certain work time as non-compensable.

1 14. Defendants have required Laborers to report to Defendant P.W. Stephens's facilities
2 by at a uniform shift start time set by Defendants – typically 7 a.m. At those facilities, the Laborers
3 have been required to perform a variety of duties, including, but not limited to, obtaining their daily
4 work schedules, gathering and loading materials necessary for the day's work, disposing of previous
5 workday's garbage, and participating in meetings. After performing these duties, Defendants have
6 required Plaintiffs and other similarly situated Laborers to travel in vehicles owned or leased by
7 Defendants to and from jobsites throughout California, where they have performed asbestos
8 abatement, lead removal, mold remediation and other related construction work for Defendants'
9 customers. Often Laborers sit on the floor of the vans' cargo areas (alongside tools, work material
10 and refuse), as there are insufficient seats and seat belts in the vans for the entire work crew. On the
11 way to the job site, the work crews frequently stop to purchase water and other drinks because
12 Defendants do not provide potable water at the job sites. However, Defendants have only paid
13 Plaintiffs and other similarly situated Laborers for the time between a uniform shift start time set by
14 Defendants – typically 7 a.m. – and until they left the jobsite, usually an estimated job length, and
15 not actual hours worked (or, only when the Laborers seek prior approval, the time they completed
16 their last assignment of the day and left the jobsite). As a result, Defendants have failed to pay
17 Plaintiffs and other similarly situated Laborers for all hours worked—be it at the statutory minimum
18 wage rate or their respective hourly rate. Defendants' failure to pay for hours worked beyond the
19 estimated job length and after departure from the last job site has also resulted in a failure to pay
20 overtime premium pay for *all* hours over eight (8) in a day or forty (40) in a week.

21 15. In addition to the above policy and practice to only compensate hours between at a
22 uniform shift start time set by Defendants – typically 7 a.m. – and the time that work ended at the
23 last jobsite, Defendants have required Plaintiffs and other similarly situated Laborers to engage in
24 uncompensated work while serving as Drivers, assigned to company-owned vehicles. Drivers have
25 been required to transport other workers, including designated supervisors and sometimes other
26 Laborers, to Defendant P.W. Stephens's facilities before the shift start time, and to return those
27 workers to their homes or the Defendant P.W. Stephens's facilities from the customer job site at the
28 conclusion of the workday. Defendants have also had a policy and practice of requiring Drivers to

1 store the company vehicles at Drivers' homes overnight. Additionally, Defendants have had a
2 policy and practice of requiring Drivers to maintain and clean assigned company vehicles. Drivers,
3 such as Plaintiff, have paid out of pocket for the costs associated with storing and cleaning the
4 company vehicles; Defendants have not reimbursed for such costs. Furthermore, Drivers have been
5 required to perform routine maintenance by taking the vehicle in for servicing for oil changes, tire
6 rotation, or any other servicing issue. Vehicle maintenance has been performed on Drivers' own
7 time, often on the weekends. Defendants have not paid Plaintiffs, and other similarly situated
8 Drivers, for all hours worked related to their Driver duties, including for driving company vehicles
9 to P.W. Stephens's facilities before the shift start time, for the return drive from the customer
10 jobsites, and for the time spent keeping the company vehicles clean and maintained. As a result of
11 Defendants' policies and practices, Defendants have failed to pay Plaintiffs and the other Drivers
12 their regular-rate wages, the minimum wage, and for all hours worked over eight (8) in a day and
13 over forty (40) in a week.

14 16. Moreover, Defendants have had a policy and practice of not paying reporting time
15 compensation when Plaintiffs and similarly situated Laborers have reported to work, as scheduled,
16 but were or are not assigned to jobsites – but rather sent home for the day without pay.

17 17. Defendants have also had policies and practices that have not complied with
18 California's meal period requirements. More specifically, Defendants have failed to provide
19 Plaintiffs and similarly situated Laborers with meal periods for workdays on which they worked at
20 more than one jobsite. The Laborers, including Plaintiffs, have frequently worked at multiple
21 jobsites during the same day. On these days, Defendants have required the Laborers to travel
22 between jobsites in lieu of providing a meal period of at least 30 minutes in which they were
23 relieved of all duties. Also, Defendants' policy and practice have often required Plaintiffs and other
24 Laborers to work over ten (10) hours in a workday, but, in those instances, Defendants have failed
25 to provide a second off-duty meal period of at least 30 minutes.

26 18. Similarly, Defendants have had a policy and practice that fails to pay all earned
27 wages to Plaintiffs and similarly situated Laborers – including for unpaid hours, overtime, and
28

1 missed meal period premium pay referenced herein – due either upon termination or within 72 hours
2 of an unnoticed quit.

3 19. In addition, Defendants have had a policy and practice that fails to maintain accurate
4 records of all hours worked, and to provide accurate wage statements, in that they do not reflect all
5 hours worked.

6 20. Plaintiff Lopez and Defendant P.W. Stephens entered into the Tolling Agreement on
7 May 1, 2015, agreeing to engage in pre-lawsuit settlement negotiations regarding the RULE 23
8 CLASS claims alleged herein. Under that agreement, Plaintiff Lopez agreed to refrain from filing a
9 lawsuit in exchange for tolling the statute on both his individual and class claims as of April 29,
10 2015.

11 21. On the afternoon of Friday, July 17, 2015, Plaintiff Lopez’s Counsel learned that
12 despite entering into a Tolling Agreement to negotiate a class-wide settlement with Plaintiff Lopez
13 and his counsel, Defendant P.W. Stephens directly communicated with putative class members –
14 without notice to Plaintiff Lopez or to his counsel, by disclosing to them contents of the confidential
15 draft complaint attached as an exhibit to the Tolling Agreement, and, by obtaining settlement and
16 release agreements that purport to release the claims set forth in the draft complaint in exchange for
17 payments of \$500. The settlement and release agreements also assert that the employees are
18 releasing claims under the FLSA, without providing a mechanism to receive approval by a court or
19 appropriate governmental agency.

20 22. On July 20, 2015, Plaintiff Lopez sent written notice by overnight mail to Defendant
21 P.W. Stephens’s attorney, John Lattin, that he was terminating the Tolling Agreement. Under the
22 terms of that agreement, Plaintiff Lopez waited ten (10) business days from such notice before filing
23 a lawsuit.

24 23. On October 27, 2014, Plaintiff Alas complied with the PAGA notice provision set
25 forth in Labor Code § 2699.3 (a)(1), by providing a certified letter to the Labor and Workforce
26 Development Agency and to Defendant P.W. Stephens, which detailed the specific provisions of the
27 Labor Code alleged to be violated – including the facts and theories to support the alleged
28

1 violations. The Labor and Workforce Development Agency provided no notice as to its intent to
2 investigate within 33 calendar days of Plaintiff Alas's notice.

3 **VI. COLLECTIVE ACTION ALLEGATIONS**

4 24. Plaintiffs bring the First and Second Causes of Action for violations of the FLSA as
5 a collective action pursuant to the FLSA, 29 U.S.C. § 216(b). This FLSA COLLECTIVE ACTION
6 includes:

7 all individuals who have performed asbestos abatement, lead removal, mold remediation
8 and related services for and paid directly by P.W. Stephens Environmental, Inc. at any time
9 during the applicable statutory time, and who file Consents to Join this action.

10 25. Plaintiffs and the FLSA COLLECTIVE ACTION Members are similarly situated,
11 in that they have performed substantially similar duties for Defendants, and are subject to
12 Defendants' common practice of not paying Laborers for all hours worked, as alleged herein.

13 26. The First and Second Causes of Action for violations of the FLSA may be brought
14 and maintained as an "opt-in" collective action pursuant to the FLSA, 29 U.S.C. § 216(b), because
15 Plaintiffs' claims are similar to the claims of the FLSA COLLECTIVE ACTION Members.

16 27. The names and addresses of the FLSA COLLECTIVE ACTION Members are
17 available from Defendant P.W. Stephens. Accordingly, Plaintiffs pray herein for an Order requiring
18 Defendant P.W. Stephens to provide the names and all available locating information for all
19 members of the FLSA COLLECTIVE ACTION, so notice can be provided to the class of the
20 pendency of this action, and their right to opt in to this action.

21 **VII. RULE 23 CLASS ACTION ALLEGATIONS**

22 28. Plaintiffs bring claims for violations of California's Labor Code and Wage Order 16
23 on behalf of themselves and the RULE 23 CLASS pursuant to the Rule 23(b)(3) of the Federal
24 Rules of Civil Procedure. The RULE 23 CLASS is comprised of:

25 all individuals who have performed asbestos abatement, lead removal, mold
26 remediation and related services ("Laborers") for and were paid directly by P.W.
27 Stephens Environmental, Inc. at any time during the period April 29, 2011 through
28 August 21, 2015 (the "RULE 23 CLASS PERIOD").

1 As part of the RULE 23, Plaintiffs seeks to certify the RULE 23 DRIVER SUBCLASS comprised
2 of:

3 all Laborers who, in addition to performing asbestos abatement, lead removal, mold
4 remediation and related services, have been required to drive a company vehicle
5 (“Drivers”) for and were paid directly by P.W. Stephens Environmental, Inc. at any
6 time during the period April 29, 2011 through August 21, 2015 (the “the RULE 23
7 DRIVER SUBCLASS PERIOD”).

8 29. Numerosity: The members of the RULE 23 CLASS are sufficiently numerous that
9 joinder of all members is impracticable. During the RULE 23 CLASS PERIOD, Defendants have
10 required Laborers to perform asbestos abatement, lead removal, mold remediation, and other related
11 construction services at residential and commercial buildings throughout California. Plaintiffs are
12 informed and believe, and on that basis allege, that at any one time Defendants employ over 200
13 Laborers in California and that all current Laborers are members of the RULE 23 CLASS, as
14 defined herein. In addition, the RULE 23 CLASS includes former Laborers employed by
15 Defendants during the period April 29, 2011 through August 21, 2015

16 30. Commonality: There are questions of law and fact common to the RULE 23 CLASS
17 and DRIVER SUBCLASS that are answerable on a common basis, and these questions predominate
18 over individual questions. The questions of law and fact common to the RULE 23 CLASS and
19 DRIVER SUBCLASS include, without limitation:

- 20 a. Whether Defendants have had a policy and practice of only paying Laborers
21 an estimated job length (or, if the Laborers seek prior approval, a revised
22 estimate that only compensated Laborers between a uniform shift start time
23 set by Defendants and the time they completed their last assignment of the
24 day and left the jobsite).but not actual hours worked failing to pay Laborers:
25 i. minimum wages for all hours worked, in violation of California’s
26 Labor Code §§ 1194(a) and 1197, General Minimum Wage Order,
27 and Wage Order 16 §§ 4(A), 5, and in violation of the FLSA
28 minimum wage provision, 29 U.S.C. § 206;

- 1 ii. at the Laborers’ regular rate of pay for all hours worked; and
- 2 iii. overtime compensation when Laborers worked in excess of eight (8)
- 3 hours in a day or forty (40) hours in a workweek, in violation of
- 4 California’s Labor Code § 510 and Wage Order 16 §§ 3, 5, and in
- 5 violation of the FLSA weekly overtime provision, 29 U.S.C. § 207;
- 6 b. Whether Defendants have had a policy and practice of requiring Laborers to
- 7 ride in the company vehicles to and from jobsites, but only paying them
- 8 until when they left the jobsites, failing to pay Laborers:
- 9 i. minimum wages for all hours worked, in violation of California’s
- 10 Labor Code §§ 1194(a) and 1197, General Minimum Wage Order,
- 11 and Wage Order 16 §§ 4(A), 5, and in violation of the FLSA
- 12 minimum wage provision, 29 U.S.C. § 206;
- 13 ii. at the Laborers’ regular rate of pay for all hours worked; and
- 14 iii. overtime compensation when Laborers worked in excess of eight (8)
- 15 hours in a day or forty (40) hours in a workweek, in violation of
- 16 California’s Labor Code § 510 and Wage Order 16 §§ 3, 5, and in
- 17 violation of the FLSA weekly overtime provision, 29 U.S.C. § 207;
- 18 c. Whether Defendants have had policies and practices that have required
- 19 members of the RULE 23 DRIVER SUBCLASS to drive company vehicles,
- 20 store the vehicles at their respective residences, pick up designated
- 21 supervisors (and sometimes other Laborers) on their drive to the office
- 22 before the start of the paid workday and drop off after the end of the paid
- 23 workday, transport tools and other materials, and keep the company vehicles
- 24 clean, at the Drivers’ expense, and maintained, usually on non-work days,
- 25 but only paying Drivers between a uniform shift start time set by Defendants
- 26 and the time they completed their last assignment of the day and left the
- 27 jobsite , failing to pay the DRIVER SUBCLASS:
- 28

- 1 i. minimum wages for all hours worked, in violation of California’s
2 Labor Code §§ 1194(a) and 1197, General Minimum Wage Order,
3 and Wage Order 16 §§ 4(A), 5, and in violation of the FLSA
4 minimum wage provision, 29 U.S.C. § 206;
- 5 ii. at the Laborers’ regular rate of pay for all hours worked; and
6 iii. overtime compensation when Laborers worked in excess of eight (8)
7 hours in a day or forty (40) hours in a workweek, in violation of
8 California’s Labor Code § 510 and Wage Order 16 §§ 3, 5, and in
9 violation of the FLSA weekly overtime provision, 29 U.S.C. § 207;
- 10 iv. reimbursements for the costs associated with cleaning the company
11 vehicles, in violation of California Labor Code § 2802.
- 12 d. Whether Defendants have had a policy and practice of not paying any wages
13 for reporting to work when they send Laborers home when there is not
14 enough work on a scheduled work day, thereby failing to pay the Rule 23
15 Class reporting time pay, in violation of California’s Wage Order 16 § 5;
- 16 e. Whether Defendants have had a policy and practice of assigning Laborers to
17 multiple jobsites in one day and requiring them to spend their statutorily-
18 mandated duty-free meal periods in the company vehicles in transit between
19 job sites, thereby failing to provide the RULE 23 CLASS with a duty-free
20 meal period, in violation of California’s Wage Order 16 § 10 and Labor
21 Code §§ 226.7 and 512;
- 22 f. Whether Defendants have had a policy and practice of only providing one
23 meal period per workday even when requiring Laborers to work more than
24 ten (10) hours in a day, thereby failing to provide the RULE 23 CLASS with
25 a second (and when necessitated by the hours worked, a third) meal period,
26 in violation of California’s Wage Order 16 § 10 and Labor Code §§ 226.7
27 and 512;
- 28

- 1 g. Whether Defendants are liable for waiting time penalties to RULE 23
2 CLASS Members whose employment with Defendants has terminated,
3 pursuant to California Labor Code § 203, for failure to comply with
4 California Labor Code §§ 201 and 202;
- 5 h. Whether Defendants’ wage statements fail to provide RULE 23 CLASS
6 Members with accurate and complete information, as required by California
7 Labor Code § 226;
- 8 i. Whether RULE 23 CLASS Members have lost money or property as a result
9 of Defendants’ violations of Business and Professions Code §§ 17200, *et*
10 *seq.*

11 31. Typicality: Plaintiffs’ claims are typical of the claims of the RULE 23 CLASS and
12 the DRIVER SUBCLASS they seek to represent. As set forth herein, Defendants’ common course
13 of conduct causes Plaintiffs and similarly situated Laborers and Drivers employed by Defendants
14 the same or similar injuries and damages. Plaintiffs’ claims are thereby representative of and co-
15 extensive with the claims of the RULE 23 CLASS.

16 32. Adequacy: Plaintiffs will fairly and adequately represent the interests of all
17 members of the RULE 23 CLASS and the DRIVER SUBCLASS they seek to represent. Plaintiffs
18 are members of the RULE 23 CLASS and DRIVER SUBCLASS they seek to represent, do not have
19 any conflicts of interests with the putative RULE 23 CLASS and DRIVER SUBCLASS Members,
20 will prosecute the case vigorously on behalf of the RULE 23 CLASS and the DRIVER
21 SUBCLASS, and have devoted time and resources to the initial investigation of these claims.
22 Plaintiffs’ counsel are competent and experienced in litigating employment actions, including wage
23 and hour class actions.

24 33. Superiority of Class Action: A class action is superior to other available methods for
25 the fair and efficient adjudication of this controversy. In particular, Plaintiffs are informed and
26 believe that RULE 23 CLASS Members are unwilling to bring individual lawsuits for fear of
27 retaliation by Defendants. Because the damages suffered by certain individual members of the
28 RULE 23 CLASS may be relatively small, the expense and burden of individual litigation make it

1 impracticable for Class Members to pursue their claims separately. Class action treatment will
2 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
3 economical for the parties and the judicial system. Class action treatment will also avoid
4 inconsistent outcomes because the same issues can be adjudicated in the same manner for all
5 members of the RULE 23 CLASS.

6 **VIII. DAMAGES**

7 34. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiffs and
8 similarly situated Laborers are owed minimum wage, overtime compensation and liquidated
9 damages, under the FLSA; minimum wage and liquidated damages, overtime compensation, wages
10 at their regularly hourly rate, compensation for missed meal periods, reporting time pay, interest,
11 expense reimbursement, waiting time penalties, and PAGA and civil penalties under California law.
12 The precise amount of these damages will be proved at trial.

13 **IX. CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION** 15 **FLSA–FAILURE TO PAY MINIMUM WAGE** 16 **(29 U.S.C. § 201, *et seq.*)**

17 **(On Behalf Of Plaintiffs and FLSA COLLECTIVE ACTION MEMBERS)**

18 35. The allegations of each of the preceding paragraphs are realleged and incorporated
19 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and all
20 FLSA COLLECTIVE ACTION Members.

21 36. At all relevant times, each Defendant has been, and continues to be, an “employer”
22 engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the
23 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed, and
24 continue to employ, Laborers including Plaintiffs and each of the FLSA COLLECTIVE ACTION
25 Members. At all relevant times, Defendants have had gross operating revenues in excess of
26 \$500,000.

27 37. Plaintiffs consent to sue in this action pursuant to Section 16(b) of the FLSA, 29
28 U.S.C. § 216(b). Other individuals have signed consent forms and joined on the FLSA causes of
action; others are likely to do so in the future.

1 38. The FLSA, 29 U.S.C. § 206, requires each covered employer, such as Defendants,
2 to compensate all non-exempt employees at the minimum wage rate of not less than \$7.25 an hour.

3 39. The FLSA COLLECTIVE ACTION Members are entitled to be paid the statutorily
4 required minimum wage rate for all hours worked, under 29 U.S.C. § 206.

5 40. From at least April 29, 2012 through August 21, 2015, Defendants have had a
6 policy and willful practice of failing and refusing to pay any wages to the FLSA COLLECTIVE
7 ACTION Members for certain hours worked, including for hours worked beyond an estimated job
8 length, and after leaving for the day from the last customer jobsite, and for work-related driving and
9 tending to the fueling, maintaining, repairing, and other tasks related to company-issued vehicles.

10 41. By failing to pay at least the minimum wage for all hours worked by Plaintiffs and
11 the FLSA COLLECTIVE ACTION Members, Defendants have violated, and continue to violate,
12 the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 206(a) and § 215(a).

13 42. By failing to record, report, and/or compensate Plaintiffs and the FLSA
14 COLLECTIVE ACTION Members, Defendants have failed to make, keep, and preserve records
15 with respect to each of its employees sufficient to determine their wages, hours, and other
16 conditions and practice of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*,
17 including 29 U.S.C. § 211(c) and § 216(b).

18 43. Plaintiffs, on behalf of themselves and the FLSA COLLECTIVE ACTION
19 Members, seeks damages in the amount of their respective minimum wage compensation and
20 liquidated damages, as provided by the FLSA, 29 U.S.C. §§ 216(b), 255 and such other legal and
21 equitable relief as the Court deems just and proper.

22 44. Plaintiffs, on behalf of themselves and the FLSA COLLECTIVE ACTION
23 Members, seeks recovery of attorneys' fees and costs of action to be paid by Defendants, as
24 provided by the FLSA, 29 U.S.C. § 216(b).

25 **SECOND CAUSE OF ACTION**
26 **FLSA—FAILURE TO PAY OVERTIME**
27 **(29 U.S.C. § 201, *et seq.*)**
28 **(On Behalf Of Plaintiffs and FLSA COLLECTIVE ACTION MEMBERS)**

45. The allegations of each of the preceding paragraphs are realleged and incorporated

1 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and all
2 FLSA COLLECTIVE ACTION Members.

3 46. The FLSA, 29 U.S.C. § 207, requires each covered employer, such as Defendants,
4 to compensate all non-exempt employees at one and one-half times their regular rate of pay for all
5 hours worked.

6 47. The FLSA COLLECTIVE ACTION Members are entitled to be paid for all hours
7 worked in excess of forty (40) hours in a week at the statutorily required overtime rate of one and
8 one-half times the regular rate at which they were employed, under 29 U.S.C. § 207.

9 48. From at least April 29, 2012 through August 21, 2015, Defendants had a policy and
10 practice of failing and refusing to pay any wages to the FLSA COLLECTIVE ACTION Members
11 for certain hours worked over forty (40) hours in a week. These unpaid work hours include hours
12 worked beyond an estimated job length and after leaving for the day from the last customer jobsite,
13 and for Drivers, work-related driving and tending to the fueling, maintaining, repairing, cleaning
14 and other tasks related to company-issued vehicles.

15 49. By failing to pay overtime premium pay for hours worked by Plaintiffs and the
16 FLSA COLLECTIVE ACTION Members in excess of forty (40) hours in a week, Defendants have
17 violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§
18 207(a)(1), 215(a).

19 50. By failing to record, report, and/or compensate Plaintiffs and the FLSA
20 COLLECTIVE ACTION Members, Defendants have failed to make, keep, and preserve records
21 with respect to each of its employees sufficient to determine their wages, hours, and other
22 conditions and practice of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*,
23 including 29 U.S.C. § 211(c) and § 216(b).

24 51. Plaintiffs, on behalf of themselves and the FLSA COLLECTIVE ACTION
25 Members, seek damages in the amount of their respective overtime premium pay and liquidated
26 damages, as provided by the FLSA, 29 U.S.C. §§ 216(b), 255 and such other legal and equitable
27 relief as the Court deems just and proper.

28 52. Plaintiffs, on behalf of themselves and the FLSA COLLECTIVE ACTION

1 Members, seeks recovery of attorneys' fees and costs of action to be paid by DEFENDANTS, as
2 provided by the FLSA, 29 U.S.C. § 216(b).

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4 **THIRD CAUSE OF ACTION**
5 **CALIFORNIA LAW-FAILURE TO PAY MINIMUM WAGE**
6 **(California Labor Code §§ 1194, 1194.2, 1197, 1197.1; California General Minimum Wage**
7 **Order; California IWC Wage Order 16)**
8 **(On Behalf of Plaintiffs and RULE 23 CLASS)**

9 53. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
11 the RULE 23 CLASS.

12 54. California's Labor Code § 1197 and Wage Order 16 § 4(B) require employers to
13 pay at least the applicable minimum wage for all hours worked.

14 55. Section 2(J) of Wage Order 16 defines "[h]ours worked" as "the time during which
15 an employee is subject to the control of an employer, and includes all the time the employee is
16 suffered or permitted to work, whether or not required to do so." In addition, Section 5(A) of Wage
17 Order 16 mandates, in relevant part, that "[a]ll employer-mandated travel that occurs after the first
18 location where the employee's presence is required by the employer shall be compensated at the
19 employee's regular rate of pay"

20 56. California's General Minimum Wage Order requires all employers to pay a
21 minimum of \$8.00 an hour per hour for all hours worked beginning January 1, 2008, and \$9.00 per
22 hour for all hours worked beginning July 1, 2014.

23 57. California Labor Code § 1194 entitles an employee receiving less than the minimum
24 wage to recover in a civil action the unpaid balance of the full amount of this minimum wage,
25 including interest thereon, reasonable attorneys' fees, and costs of suit.

26 58. California Labor Code § 1194.2 entitles an employee receiving less than the legal
27 minimum wage to recover liquidated damages in an amount equal to the wages unlawfully unpaid
28 and interest thereon.

59. California Labor Code § 1197.1 subjects an employer or other person who caused
an employee to be paid a wage less than the minimum wage to: (1) a civil penalty equal to one

1 hundred dollars (\$100) for each underpaid employee for each pay period in which the employee is
2 underpaid for an initial violation that is intentionally committed; (2) a civil penalty equal to two
3 hundred fifty dollars (\$250) for a subsequent violation for the same specific offense for each
4 underpaid employee for each pay period regardless of whether the initial violation is intentionally
5 committed; (3) restitution of wages; and (4) liquidated damages, all payable to the employee.

6 60. From at least April 29, 2011 through August 21, 2015, Defendants have had a
7 policy and practice of failing and refusing to pay any wages to the members of the RULE 23
8 CLASS for certain hours worked, including for hours worked beyond an estimated job length after
9 leaving for the day from the last customer jobsite.

10 61. Plaintiffs and the DRIVER SUBCLASS worked additional time beyond other
11 employees as Defendants required them to engage in work-related driving, including transporting
12 employees, tools and equipment, and other materials; and tend to the fueling, maintaining, repairing,
13 cleaning, and other tasks related to company-issued vehicles.

14 62. As a consequence, Defendants have failed to pay minimum wages to Plaintiffs, the
15 RULE 23 CLASS and the DRIVER SUBCLASS for all hours worked as alleged above in violation
16 of California's Labor Code §§ 1194, 1194.2, 1197, 1197.1, General Minimum Wage Order and
17 Wage Order 16, § 4.

18 63. As a result of Defendants' conduct, Plaintiffs, the RULE 23 CLASS, and the
19 DRIVER SUBCLASS, have been deprived of minimum wages in an amount to be determined at
20 trial, and are entitled to recovery of the unpaid balance of the full amount of these minimum wages,
21 including interest thereon, reasonable attorneys' fees, and costs of suit pursuant to California Labor
22 Code § 1194; liquidated damages and interest thereon pursuant to California Labor Code § 1194.2;
23 and civil penalties, restitution of wages, and liquidated damages pursuant to California Labor Code
24 § 1197.1.

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1 **FOURTH CAUSE OF ACTION**
2 **CALIFORNIA LAW--FAILURE TO PAY FOR ALL HOURS WORKED**
3 **(California Labor Code §§ 204, 218.5, 223, 1194; California IWC Wage Order 16)**
4 **(On Behalf of Plaintiffs and the RULE 23 CLASS)**

5 64. The allegations of each of the preceding paragraphs are realleged and incorporated
6 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
7 the RULE 23 CLASS.

8 65. Section 2(J) of California IWC Wage Order 16 defines “[h]ours worked” as “the
9 time during which an employee is subject to the control of an employer, and includes all the time
10 the employee is suffered or permitted to work, whether or not required to do so.” In addition,
11 Section 5(A) of California IWC Wage Order 16 mandates, in relevant part, that “[a]ll employer-
12 mandated travel that occurs after the first location where the employee’s presence is required by the
13 employer shall be compensated at the employee’s regular rate of pay . . .”

14 66. California law requires payment of all wages due, whether established by contract
15 or by law, for “all hours worked.” California IWC Wage Order 16 § (4)(B).

16 67. California Labor Code § 223 requires an employer to pay an employee the wage
17 designated by statute or contract. By failing to pay such wages on at least a weekly basis,
18 Defendants have further violated California Labor Code § 204 by failing to pay all earned wages in
19 a timely manner.

20 68. Plaintiffs bring this cause of action under California Labor Code § 218.5,
21 authorizing a private right of action for the nonpayment of wages.

22 69. From at least April 29, 2011 through August 21, 2015, Defendants have had a
23 policy and practice of failing and refusing to pay any wages to members of the RULE 23 CLASS
24 for certain hours worked, including for hours worked beyond an estimated job length. and after
25 leaving for the day from the last customer jobsite.

26 70. Plaintiff and the DRIVER SUBCLASS worked additional time beyond other Class
27 Members, as Defendants required them to engage in work-related driving, including transporting
28 employees, tools and equipment, and other materials; and tend to the fueling, maintaining, repairing,
cleaning, and other tasks related to company-issued vehicles.

1 workweek.

2 77. California Labor Code § 510 and California IWC Wage Order 16 § 3(A) further
3 require employers to pay employees two (2) times the regular rate of pay for hours worked in excess
4 of twelve (12) hours per day and, on the seventh consecutive workday, any work in excess of eight
5 (8) hours.

6 78. California Labor Code § 1194 entitles an employee receiving less than the legal
7 overtime compensation to recover in a civil action the unpaid balance of the full amount of all
8 overtime wages owed, including interest thereon, reasonable attorney’s fees, and costs of suit.

9 79. From at least April 29, 2011 through August 21, 2015, Defendants have had a
10 policy and practice of failing and refusing to pay any wages to the members of the RULE 23
11 CLASS for certain hours worked, including for hours worked beyond an estimated job length. and
12 after leaving for the day from the last customer jobsite.

13 80. Plaintiffs and the DRIVER SUBCLASS worked additional time beyond other Class
14 Members, as Defendants required them to engage in work-related driving, including transporting
15 employees, tools and equipment, and other materials; and tend to the fueling, maintaining, repairing,
16 cleaning, and other tasks related to company-issued vehicles.

17 81. As a consequence, Defendants have failed to pay overtime compensation to
18 Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS for all hours worked, as alleged
19 above in violation of California Labor Code § 510 and California IWC Wage Order 16 § 3(A).

20 82. As a result of Defendants’ conduct, Plaintiffs and the RULE 23 CLASS have been
21 and continue to be deprived of overtime compensation in an amount to be determined at trial, and
22 are entitled to recovery of such amounts, including interest thereon, reasonable attorney’s fees, and
23 costs of suit pursuant to California Labor Code § 1194.

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**SIXTH CAUSE OF ACTION
CALIFORNIA LAW--REPORTING TIME PAY
(California IWC Wage Order 16; California Labor Code § 218.5)
(On Behalf of Plaintiffs and the RULE 23 CLASS)**

83. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the RULE 23 CLASS.

84. California IWC Wage Order 16 § 5 (B) mandates that “[e]ach workday that an employee is required to report to the work site and does report, but is not put to work or is furnished less than half of his/her usual or scheduled day’s work, the employer shall pay him/her for half the usual or scheduled day’s work but in no event for less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay”

85. Defendants have had a policy and practice of not paying reporting time pay when Plaintiffs and members of the RULE 23 CLASS reported and report to work, as scheduled, but were or are not assigned to jobsites – but rather sent home for the day.

86. By their failure to provide reporting time pay, Defendants have violated the provisions of the applicable section of California IWC Wage Order 16.

87. As a result of Defendants’ unlawful acts, Plaintiffs and the RULE 23 CLASS have been deprived of wages in amounts to be determined at trial, and are entitled to recover such amounts, plus interest thereon, penalties, attorneys’ fees, and costs.

**SEVENTH CAUSE OF ACTION
CALIFORNIA LAW -FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS
(California Labor Code §§ 226.7, 1194, 512; California IWC Wage Order 16)
(On Behalf of Plaintiffs and the RULE 23 CLASS)**

88. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the RULE 23 CLASS.

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1 89. California Labor Code § 512 and California IWC Wage Order 16 § 10(A) require
2 that an employer provides a meal period of at least 30 minutes in which each employee is relieved
3 of all duty for every five (5) hours worked. California IWC Wage Order 16 § 10(B) requires that an
4 employer must provide a second meal period of no fewer than 30 minutes for all workdays on which
5 an employee works more than ten (10) hours.

6 90. California Labor Code §§ 226.7 and 512 and California IWC Wage Order 16 §
7 10(F) provide that an employee shall receive a premium of one hour pay for each day worked in
8 which his/her employer did not provide the meal periods required by California Labor Code § 512
9 and California IWC Wage Order 16 § 10 (A), (B).

10 91. Defendants’ policy and practice of frequently assigning Plaintiffs and members of
11 the RULE 23 CLASS to multiple jobsites during the same day required Plaintiffs and members of
12 the RULE 23 CLASS to travel between jobsites during what should have been an off-duty meal
13 period, as required by California law.

14 92. Defendants’ policy and practice often required and continues to require Plaintiffs
15 and members of the RULE 23 CLASS to work over ten (10) hours in a workday, but it was and
16 continues to be Defendants’ policy and practice to not provide Plaintiffs and the RULE 23 CLASS
17 with a statutorily-required second (and, when the long hours necessitate, a third) meal period in
18 which they were relieved of all duty, as required by California law.

19 93. Because Defendants failed to provide Plaintiffs and similarly situated Laborers
20 compliant meal periods, they are liable to Plaintiffs and other members of the RULE 23 CLASS for
21 one hour of additional pay at the regular rate of compensation for each workday that the compliant
22 meal periods were not provided, attorneys’ fees, penalties, and interest, pursuant to Labor Code §§
23 226.7(b), 218.5, and 1194, and California IWC Wage Order 16, §10.

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**EIGHTH CAUSE OF ACTION
CALIFORNIA LAW-FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
(California Labor Code § 2802)
(On Behalf of Plaintiffs and the RULE 23 DRIVER SUBCLASS)**

94. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and the RULE 23 DRIVER SUBCLASS.

95. California Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

96. California Labor Code § 2802 provides in pertinent part: “Any contract or agreement . . . made by an employee to waive the benefits of this article or any part thereof, is null and void”

97. In order to discharge their Driver-related duties for Defendants, Plaintiffs and similarly situated Drivers were required and/or expected by Defendants to clean the company vehicles assigned to them. However, Defendants did not fully pay for expenses incurred as a result of Plaintiffs and RULE 23 DRIVER SUBCLASS members’ efforts to maintain the cleanliness of the company vehicles.

98. Plaintiffs and the RULE 23 DRIVER SUBCLASS are entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802.

**NINTH CAUSE OF ACTION
CALIFORNIA LAW-WAITING TIME PENALTIES
(California Labor Code §§ 201, 202, 203)
(On Behalf of Plaintiffs and the RULE 23 CLASS [Upon Separation])**

99. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and members of the RULE 23 CLASS who were or are no longer employed by Defendants.

100. California Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due immediately at the time of discharge, layoff, or resignation made with at least 72

1 hours' notice, or within 72 hours of resignation made without 72 hours' notice.

2 101. California Labor Code § 203 provides that if an employer willfully fails to pay
3 compensation promptly upon separation, as required by §§ 201 or 202, then the employer is liable
4 for waiting time penalties in the form of one day of wages for up to 30 days.

5 102. Plaintiffs and the Class are informed, believe, and allege thereon that Defendants
6 have failed to pay all earned wages to Plaintiffs and the Class during their employment with
7 Defendants. In addition, since at least April 29, 2011, members of the Class have been discharged,
8 laid off, resigned, retired or otherwise voluntarily left employment, but Defendants has not paid
9 earned wages upon separation of employment in violation of California Labor Code §§ 201 and
10 202. Defendants' conduct in this regard has been willful.

11 103. As a consequence of Defendants' willful failure to pay wages due to each such
12 employee following separation from employment as required by California Labor Code §§ 201 and
13 202, Plaintiffs and members of the RULE 23 CLASS whose employment ended during the four
14 years prior to entering into the Tolling Agreement and continuing through August 21, 2015 are
15 entitled to recover from Defendants an additional sum as a penalty, pursuant to California Labor
16 Code § 203, equal to a day's wages, for thirty (30) days, plus interest, for each employee who
17 separated from employment with Defendants, in amounts according to proof at trial, attorneys' fees,
18 and costs.

19 **TENTH CAUSE OF ACTION**
20 **CALIFORNIA LAW-FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
21 **(California Labor Code §§ 226 & 226.3)**
22 **(On Behalf of Plaintiffs and the RULE 23 CLASS)**

23 104. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
25 members of the RULE 23 CLASS who were or are no longer employed by Defendants.

26 105. California Labor Code § 226 (a) requires Defendants, at the time of each payment of
27 wages, to provide each employee with an accurate wage statement itemizing, among other things,
28 the total hours worked by the employee, the gross and net wages earned by the employee in the pay
period.

1 106. California Labor Code § 226 (e) provides that an employee suffering injury as a
2 result of a knowing and intentional failure by an employer to comply with Labor Code § 226 (a) is
3 entitled to recover the greater of his or her actual damages or a penalty of \$50 for the initial pay
4 period in which a violation occurs and \$100 per employee for each violation in subsequent pay
5 periods (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

6 107. Plaintiffs and the RULE 23 CLASS are informed, believe and allege thereon, that
7 since at least April 29, 2011, Defendants have knowingly and intentionally failed to provide
8 accurate itemized wage statements to Plaintiffs and the RULE 23 CLASS in accordance with Labor
9 Code § 226 (a).

10 108. Plaintiffs and the RULE 23 CLASS are informed, believe, and allege thereon, that
11 the wage statements Defendants provided to Plaintiffs and the RULE 23 CLASS do not reflect all
12 hours worked.

13 109. As a result of Defendants' acts and omissions in violation of Labor Code § 226,
14 Defendants are liable to Plaintiffs and the RULE 23 CLASS for \$50 for each initial pay period when
15 a violation occurred and \$100 for each subsequent violation up to \$4,000, and reasonable attorneys'
16 fees and costs of this suit pursuant to Labor Code § 226 (e).

17 110. Pursuant to Labor Code § 226.3, Defendants are also liable for civil penalties per
18 employee per violation.

19 **ELEVENTH CAUSE OF ACTION**
20 **CALIFORNIA LAW – VIOLATIONS OF THE PRIVATE ATTORNEY GENERAL ACT**
21 **(California Labor Code §§ 2698, et seq.)**
22 **(On Behalf of Plaintiff Alas and the RULE 23 CLASS)**

23 111. The allegations of each of the preceding paragraphs are realleged and incorporated
24 herein by reference, and Plaintiff Alas allege as follows a cause of action on behalf of themselves
25 and the RULE 23 CLASS.

26 112. On a representativand/or class action basis, Plaintiff Alas seek recovery of penalties
27 under Private Attorney General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq

28 113. Plaintiff seeks to collect the following penalties pursuant to PAGA on behalf of
similarly situated current and former Laborers who: (1) have not been paid minimum wage for all

1 hours worked in violation of Labor Code §§ 1194, 1197, 1197.1, and California IWC Wage Order
2 16; (2) have not been paid for all hours worked in violation of Labor Code §§ 204, 223, 1194, and
3 California IWC Wage Order 16; (3) have not been paid overtime for certain hours worked in
4 violation of Labor Code §§ 510, 1194, and California IWC Wage Order 16; (5) have not been
5 provided meal periods required by Labor Code § 512 and California IWC Wage Order 16, and
6 have not been compensated for such missed meal periods as required by Labor Code § 226.7; (7)
7 PW Stephens has willfully failed to keep required payroll records showing the actual hours worked
8 each day by Plaintiff and other Laborers, in violation of Labor Code § 1174 and California IWC
9 Wage Order 16.

10 114. Plaintiff Alas and similarly situated Laborers are aggrieved employees because they
11 are and/or were employed by the alleged violator and the alleged violations were committed
12 against them.

13 115. Plaintiff Alas complied with the PAGA notice provision set forth in Labor Code
14 §2699.3(a)(1) by providing a certified letter dated October 27, 2015 to the Labor and Workforce
15 Development Agency and Defendant P.W. Stephens, which detailed the specific provisions of the
16 Labor Code alleged to be violated – including the facts and theories to support the alleged
17 violations.

18 116. The Labor and Workforce Development Agency provided no notice as to its intent
19 to investigate within 33 calendar days of Plaintiff Alas’s notice.

20 117. Plaintiff Alas requests civil penalties against Defendants for their violations of the
21 Labor Code, as provided under Labor Code § 558 and § 2699(f), plus attorneys’ fees and costs, in
22 amounts to be proved at trial.

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1 **TWELFTH CAUSE OF ACTION**
2 **CALIFORNIA LAW-VIOLATIONS OF THE UNFAIR COMPETITION LAW**
3 **(California Business and Professions Code §§ 17200, *et seq.*)**
4 **(On Behalf of Plaintiffs and the RULE 23 CLASS)**

5 118. The allegations of each of the preceding paragraphs are realleged and incorporated
6 herein by reference, and Plaintiffs allege as follows a cause of action on behalf of themselves and
7 the RULE 23 CLASS.

8 119. Beginning on a date unknown to Plaintiffs, but beginning at least since April 29,
9 2011, through Defendants' acts and omissions alleged herein, Defendants committed and continue
10 to commit unlawful acts that violated and continue to violate Business and Professions Code §
11 17200, *et seq.*

12 120. Defendants' unlawful acts include violating the FLSA and California's Labor Code
13 sections, California IWC Wage Order 16, and General Minimum Wage Order, as alleged above.

14 121. Defendants' violation of these statutes and regulations independently and separately
15 constitute an unlawful business practice within the meaning of Business and Professions Code §
16 17200, *et seq.*

17 122. Beginning at an exact date unknown to Plaintiffs, but at least since April 29, 2011,
18 Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as
19 defined by Business & Professions Code § 17200, by engaging in the following:

- 20 a. failing to pay minimum wage compensation, as required by the FLSA, to
21 Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS;
- 22 b. failing to pay overtime compensation, as required by the FLSA, to Plaintiffs,
23 the RULE 23 CLASS, and the DRIVER SUBCLASS;
- 24 c. failing to pay minimum wage compensation, as required under California
25 law, to Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS;
- 26 d. failing to pay overtime compensation, as required under California law, to
27 Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS;
- 28 e. failing to pay all wages due at the regular rate of pay, as required under
California law, to Plaintiffs, the RULE 23 CLASS, and the DRIVER

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SUBCLASS;

- f. failing to pay reporting time pay, as required under California law, to Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS;
- g. failing to provide 30-minute, duty-free meal periods, as required by California law, to Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS, and failing to pay them premium pay for missed meal periods;
- h. failing to reimburse for ordinary business expenses incurred by Plaintiffs and the DRIVER SUBCLASS related to maintaining the cleanliness of the company vehicles; and
- i. failing to pay, upon termination of employment, all wages due to Plaintiffs and similarly situated members of the RULE 23 CLASS, as required by California law;
- j. failing to provide Plaintiffs and the RULE 23 CLASS accurate wage statements; and

123. As a result of the aforementioned acts, Plaintiffs, the RULE 23 CLASS and DRIVER SUBCLASS have lost and continue to lose money or property and suffered and continue to suffer injury in fact. Defendants continue to hold unpaid wages and other funds legally belonging to Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS.

124. Plaintiffs, the RULE 23 CLASS, and DRIVER SUBCLASS are entitled to restitution pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, minimum wage, overtime pay, missed meal period compensation, reporting time compensation, unlawful deductions from compensation, and interest since four years prior to entering into the Tolling Agreement.

125. Plaintiffs, the RULE 23 CLASS, and DRIVER SUBCLASS are entitled to restitution in the amounts unlawfully withheld by Defendants, with interest; and to an award of attorneys' fees and costs.

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalves, and on behalf of each similarly situated FLSA COLLECTIVE ACTION Member who files a Consent to Join form, Plaintiffs, requests relief as follows:

- A. On Plaintiffs’ First and Second Cause of Action, for an order by the Court certifying Plaintiffs’ FLSA claims as a collective action under 29 U.S.C. § 216(b), requiring Defendants to identify all FLSA COLLECTIVE ACTION Members and to provide all available locating information for the FLSA COLLECTIVE ACTION Members, and providing notice to all FLSA COLLECTIVE ACTION Members of this lawsuit and of their opportunity to file a written Consent to Join Form in this action.
- B. On Plaintiffs’ First and Second Cause of Action, for all unpaid wages due and owing under the FLSA, commencing three years before the date Collective Action Class Members’ Consents to Join forms are filed, including: (A) compensation for all hours worked during the applicable period, per 29 U.S.C. §§ 216(b), 255(a), calculated at the proper lawful rate of pay, including minimum wage on the First Cause of Action and overtime at time-and-one-half overtime premium pay for all compensable hours worked in excess of forty (40) hours per week on the Second Cause of Action; (B) equal additional amounts as liquidated damages, under 29 U.S.C. § 216(b) and/or pre-judgment interest at the maximum lawful amount on all monetary damages awarded; and (C) attorneys’ fees and costs.
- C. For such other relief as the Court may deem just and appropriate.

WHEREFORE, Plaintiffs, on behalf of themselves and the above-described RULE 23 CLASS and DRIVER SUBCLASS, prays for relief as follows, jointly and severally from all Defendants:

- A. Certification of this action as a class action on behalf of the proposed RULE 23 CLASS and DRIVER SUBCLASS, pursuant to Federal Rule of Civil Procedure Rule 23(b)(3);
- B. Designation of Plaintiffs as Representative of the RULE 23 CLASS and DRIVER

- 1 SUBCLASS they seek to represent;
- 2 C. Provision of Class notice to all Laborers who worked for Defendants in California
- 3 during the Class Period described above;
- 4 D. An award of unpaid minimum wage (and liquidated damages, thereon) and/or
- 5 unpaid wages at regular hourly rates, overtime compensation and liquidated
- 6 damages thereon, reporting time pay, meal period premiums, and reimbursement for
- 7 unlawful deductions from wages, and penalties owed to Plaintiffs, the RULE 23
- 8 CLASS, and the DRIVER SUBCLASS, subject to proof at trial;
- 9 E. An award of waiting time penalties, and restitution of all amounts owed to
- 10 Plaintiffs, the RULE 23 CLASS, and the DRIVER SUBCLASS in an amount
- 11 according to proof;
- 12 F. An award of penalties based on Defendants' failure to provide accurate wage
- 13 statement penalties owed to Plaintiffs, the RULE 23 CLASS, and the DRIVER
- 14 SUBCLASS in an amount according to proof;
- 15 G. Appropriate penalties under Labor Code § 558 and §2699;
- 16 H. Pre-judgment and post-judgment interest, as provided by law;
- 17 I. As a present and actual controversy exists between Plaintiffs and Defendants
- 18 concerning their rights and respective duties, as Plaintiffs contend that Defendants
- 19 violated their rights under the FLSA and California's Labor Code, California IWC
- 20 Wage Order 16, and General Minimum Wage Order, and that such violations have
- 21 been unfair and unlawful business practices that have injured the general public, and
- 22 that Defendants deny these allegations, Plaintiffs therefore seek a judicial
- 23 declaration of the rights and duties of the respective parties.
- 24 J. Reasonable attorneys' fees and costs of suit, including but not limited to expert fees
- 25 and fees pursuant to the FLSA, 29 U.S.C. § 216(b), California Labor Code §§ 218.5,
- 26 1194, and 2802; Civil Procedure Code § 1021.5, and any other applicable law; and

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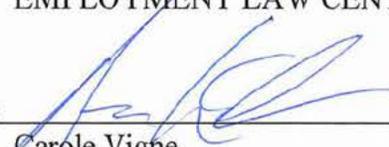
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1 K. Such other equitable relief as the Court may deem just and proper.

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3 Dated: April 8, 2016

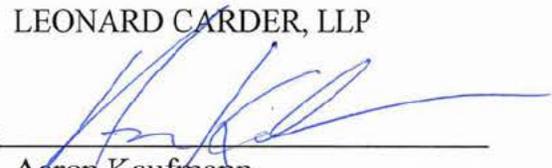
4 Respectfully submitted,

5 LEGAL AID SOCIETY –
6 EMPLOYMENT LAW CENTER

7 By: 

8 *bol* Carole Vigne
9 Diane Webb

10 LEONARD CORDER, LLP

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