

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Scott K. Dauscher State Bar No. 204105
SDauscher@aalrr.com
3 Jon M. Setoguchi State Bar No. 207113
JSetoguchi@aalrr.com
4 12800 Center Court Drive South, Suite 300
Cerritos, California 90703-9364
5 Telephone: (562) 653-3200
Fax: (562) 653-3333
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7 Attorneys for Defendant LOS ANGELES ENGINEERING, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF RIVERSIDE

10 BRADLEY HERMAN, Individually, and on
behalf of Other Members of the Public
11 Similarly Situated,

12 Plaintiffs,

13 v.

14 LOS ANGELES ENGINEERING, INC., and
DOES 1-10, INCLUSIVE,

15 Defendants.
16

Case No. RIC 1211002

**ANSWER OF DEFENDANT LOS
ANGELES ENGINEERING, INC. TO
FIRST AMENDED COMPLAINT**

17 Complaint Filed: July 19, 2012
Trial Date: None

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19 Defendant LOS ANGELES ENGINEERING, INC. ("Defendant"), for itself and for no
20 other defendant, answers the unverified First Amended Complaint of BRADLEY HERMAN
21 ("Plaintiff") as follows:

22 **GENERAL DENIAL**

23 Pursuant to California *Code of Civil Procedure* Section 431.30(d), Defendant denies each
24 and every allegation contained in Plaintiff's unverified Complaint and each purported cause of
25 action contained therein, and denies that Plaintiff, and each and every member of the putative class
26 Plaintiff seeks to represent, has sustained or will incur damages in the sum or sums alleged, or in
27 any sum, or at all, by reason of any act, breach or omission on the part of Defendant, or on the part
28 of any agent, servant, or employee of Defendant, or of any of them, and further denies that

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
TELEPHONE: (562) 653-3200
FAX: (562) 653-3333

1 Plaintiff, and each and every member of the putative class Plaintiff seeks to represent, is entitled to
2 any relief.

3 **AFFIRMATIVE DEFENSES**

4 FOR ITS AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION PURPORTED
5 TO BE SET FORTH AGAINST IT IN PLAINTIFF'S UNVERIFIED COMPLAINT,
6 DEFENDANT ALLEGES AS FOLLOWS BASED UPON INFORMATION AND BELIEF:

7 **FIRST AFFIRMATIVE DEFENSE**

8 1. Plaintiff's unverified Complaint, and each and every purported cause of action
9 alleged therein, or some of those purported causes of action, are barred in whole, or in part, by the
10 applicable limitations periods including, but not limited to, those set forth in California *Code of*
11 *Civil Procedure* sections 312, 335, 337, 338, 339, 340, and/or 343, California *Business and*
12 *Professions Code* section 17208, and/or by California *Labor Code* section 2699.3.

13 **SECOND AFFIRMATIVE DEFENSE**

14 2. Plaintiff's unverified Complaint, and each purported cause of action contained
15 therein, is barred by the doctrine of laches.

16 **THIRD AFFIRMATIVE DEFENSE**

17 3. Plaintiff, and each member of the purported class Plaintiff seeks to represent, lacks
18 standing to assert some or all of the claims set forth in his unverified Complaint.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 4. Plaintiff is not an adequate representative of the purported class(es) Plaintiff seeks
21 to represent.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 5. Plaintiff is not a proper plaintiff for purposes of the claims Plaintiff asserts on
24 behalf of the members of the purported class he seeks to represent or for purposes of any claims
25 asserted by the Plaintiff in his unverified Complaint in a representative capacity in that, among
26 other things, the claims of the Plaintiff are not typical of the alleged claims of the members of the
27 purported class Plaintiff seeks to represent.

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12800 CENTER COURT DRIVE SOUTH, SUITE 300
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1 wage statements, of their failure to timely be paid all wages due and owing upon separation of
2 their employment from Defendant, and of their alleged failure to be reimbursed for expenses in the
3 discharge of their employment duties.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 12. Plaintiff's claim(s) and/or cause(s) of action for alleged failure to provide an unpaid
6 meal period fail in whole in or in part because Plaintiff and each member of the purported class
7 Plaintiff seeks to represent, waived such unpaid meal periods as provided for by *Labor Code*
8 section 512 and/or as provided for by the applicable Wage Order and/or simply failed to avail
9 themselves of such unpaid meal periods.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 13. Any acts or omissions by Defendant were justified, and, by reason of the foregoing,
12 Plaintiff and each member of the purported class Plaintiff seeks to represent are barred from any
13 recovery against Defendant.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 14. At all times herein mentioned, Plaintiff and/or each member of the purported class
16 Plaintiff seeks to represent contributed in some manner and by some means to the losses, injuries
17 and/or damages alleged in the unverified Complaint, which alleged losses, injuries and/or damages
18 are not admitted, and all such alleged losses, injuries and/or damages were the actual and
19 proximate result of negligence and/or the result of other acts or omissions on the part of Plaintiff
20 and/or each member of the purported class Plaintiff seeks to represent.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 15. The damages alleged in Plaintiff's unverified Complaint, which damages are not
23 expressly or impliedly admitted, were caused in whole or in part by intervening and/or
24 superseding causes originating in persons or entities not under the supervision or control of
25 Defendant for which Defendant is not responsible.

26 **SIXTEENTH AFFIRMATIVE DEFENSE**

27 16. Any damages or losses to Plaintiff, and each member of the purported class
28 Plaintiff seeks to represent, were caused solely by reason of the acts, breaches, negligence, and

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ATTORNEYS AT LAW
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
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1 conduct of Plaintiff and/or each member of the purported class Plaintiff seeks to represent or by
2 others, and without any negligence, breach, or other unlawful or wrongful conduct whatsoever on
3 the part of Defendant and, as a consequence thereof, Plaintiff and each member of the purported
4 class Plaintiff seeks to represent are barred from relief or recovery on the unverified Complaint.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 17. Recovery by Plaintiff, and each member of the purported class Plaintiff seeks to
7 represent, is barred in whole or in part the failure of Plaintiff, and each member of the purported
8 class Plaintiff seeks to represent, to mitigate their alleged damages.

9 **EIGHTEENTH AFFIRMATIVE DEFENSE**

10 18. Plaintiff, and each member of the purported class Plaintiff seeks to represent, have
11 failed to act in good faith and are barred from relief by the doctrine of unclean hands.

12 **NINETEENTH AFFIRMATIVE DEFENSE**

13 19. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and
14 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
15 represent for alleged violation(s) of California *Business and Professions Code* Section 17200, *et*
16 *seq.*, are barred in whole or in part for any allegation in the Complaint premised on a violation of
17 any other California law for which no timely action thereunder may be filed where the conduct
18 complained of does not constitute the “practice” of Defendant.

19 **TWENTIETH AFFIRMATIVE DEFENSE**

20 20. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and
21 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
22 represent for alleged violation(s) of California *Business and Professions Code* Section 17200, *et*
23 *seq.*, are barred in whole or in part as a matter of law for any allegation in the Complaint premised
24 on a violation of any other California law for which no timely action thereunder may be filed
25 where the conduct complained of does not constitute the “willful conduct” of any named
26 Defendant.

27 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

28 21. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
TELEPHONE: (562) 653-3200
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1 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
2 represent for alleged violation(s) of California *Business and Professions Code* Section 17200, *et*
3 *seq.*, are barred in whole or in part as a matter of law where any conduct on which such an action
4 is based is lawful under California law.

5 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

6 22. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and
7 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
8 represent for alleged violation(s) of California *Business and Professions Code* Section 17200, *et*
9 *seq.*, are barred in whole or in part as a matter of law where the conduct complained of is
10 authorized by law.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

12 23. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and
13 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
14 represent for alleged violation(s) of California *Business and Professions Code* Section 17200, *et*
15 *seq.*, are barred in whole or in part as a matter of law because Plaintiff's unverified Complaint
16 does not specify alleged facts on the basis of which individuated claims of violations of California
17 law may be identified and discerned for purposes of responding thereto.

18 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

19 24. The claims asserted by Plaintiff in his unverified Complaint on his own behalf and
20 the claims asserted by Plaintiff on behalf of the members of the purported class Plaintiff seeks to
21 represent for alleged violation(s) of *California Business and Professions Code* Section 17200, *et*
22 *seq.*, are barred in whole or in part as a matter of law because the Plaintiff is not competent under
23 *Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 138 to maintain this action.

24 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25 25. Defendant, and its officers, employees and agents, to the extent any such
26 individuals made such a decision, had a good faith belief that further wages were not due to the
27 Plaintiff or to any of the members of the purported class the Plaintiff seeks to represent at the
28 times alleged, or at any time relevant thereto, and such good faith belief precludes any recovery

WINNING, UNDEFEATED, UNSTOPPABLE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
TELEPHONE: (562) 653-3200
FAX: (562) 653-3333

1 penalties are sought in order for there to be recovery of penalties on any such persons' behalf.

2 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

3 32. Plaintiff has failed to exhaust his administrative remedies under the Private
4 Attorneys General Act, Labor Code §2698, *et seq.*, and is barred from proceeding with any of her
5 claims under the statute for that reason.

6 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

7 33. Plaintiff's, and each member of the purported class Plaintiff seeks to represent,
8 claim(s) and/or cause(s) of action seeking civil penalties pursuant to the Labor Code Private
9 Attorneys General Act of 2004 codified at *Labor Code* Section 2698, *et seq.*, are barred in whole
10 or in part because Plaintiff, and each member of the purported class Plaintiff seeks to represent,
11 failed to timely and/or fully comply with the requirements of *Labor Code* Section 2699.3.

12 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

13 34. Plaintiff's, and each member of the purported class Plaintiff seeks to represent,
14 claim(s) and/or cause(s) of action seeking civil penalties pursuant to *Labor Code* Section 2698, *et*
15 *seq.*, are barred in whole or in part because an award of civil penalties would violate Defendant's
16 due process rights protected by the United States Constitution and/or by the California
17 Constitution because the provisions of *Labor Code* Section 2698 are impermissibly vague and/or
18 ambiguous and/or because such an award of civil penalties would violate Defendant's due process
19 rights in the same manner or in a similar manner as awards of punitive damages in excess of
20 constitutionally permissible limits violate such rights.

21 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

22 35. Plaintiff's, and each member of the purported class Plaintiff seeks to represent,
23 claims for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004
24 codified at *Labor Code* Section 2698, *et seq.* are barred in whole or in part because Plaintiff has
25 not exhausted his administrative remedies.

26 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

27 36. Plaintiff's, and each member of the purported class Plaintiff seeks to represent,
28 claims are barred by the exemptions contained in the Labor Code and/or applicable wage orders of

WINNING, UNDELOIN, LUIA, IUUU, IUUUU
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
TELEPHONE: (562) 653-3200
FAX: (562) 653-3333

1 the Industrial Welfare Commission.

2 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

3 37. Plaintiff's, and each member of the purported class Plaintiff seeks to represent,
4 action is barred since Defendant relied in good faith in conformity with and in reliance upon
5 written guidelines, interpretations, and rules promulgated by the DLSE and upon the
6 administrative practice and enforcement policies of the DLSE regarding the payment of wages and
7 compliance with California's wage and hour laws.

8 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

9 38. The claims asserted in Plaintiff's unverified Complaint, or some of them, are
10 frivolous, unreasonable and groundless, and, accordingly, Defendant should recover all costs and
11 attorneys' fees incurred herein to defend against such claims.

12 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

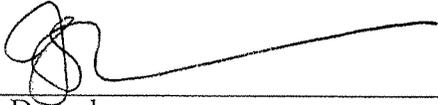
13 39. Defendant presently has insufficient knowledge or information on which to form a
14 belief as to whether it may have additional, as yet unstated, affirmative defenses available.
15 Defendant reserves the right to assert additional defenses in the event further analysis and/or
16 discovery indicates that they would be appropriate.

17 WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- 18 1. That judgment be entered in favor of Defendant and against Plaintiff;
- 19 2. That Plaintiff take nothing by his Complaint;
- 20 3. For reasonable attorneys' fees and costs of suit incurred herein; and
- 21 4. For such other relief as the Court deems just and proper.

22
23 Dated: October 8, 2012

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

24
25 By: 

26 Scott K. Dauscher
27 Jon M. Setoguchi
28 Attorneys for Defendant LOS ANGELES
ENGINEERING, INC.

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
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FAX: (562) 653-3333

