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and for Class Members and Subclass Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

BY FAX

BRADLEY HERMAN, Individually, and On
Behalf of Other Members of the Public
Similarly Situated,

Plaintiff,

v.

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

Defendants.

Case No. RIC 1211002

**CLASS ACTION PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE § 382 AS TO
PLAINTIFF'S FIRST THROUGH
SEVENTH CAUSES OF ACTION**

**REPRESENTATIVE ACTION AS TO
PLAINTIFF'S EIGHTH THROUGH
FIFTEENTH CAUSES OF ACTION**

**FIRST AMENDED COMPLAINT
FOR:**

- (1) FAILURE TO PAY OVERTIME WAGES;**
- (2) FAILURE TO PAY WAGES DUE ON TERMINATION;**
- (3) FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS;**
- (4) FAILURE TO PROVIDE MEAL PERIODS;**
- (5) FAILURE TO PROVIDE REST**

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- PERIODS;**
- (6) FAILURE TO REIMBURSE EMPLOYEE EXPENSES;**
- (7) UNFAIR COMPETITION;**
- (8) VIOLATION OF CALIFORNIA LABOR CODE § 226(A) BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (9) VIOLATION OF CALIFORNIA LABOR CODE §§ 201 AND 202 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (10) VIOLATION OF CALIFORNIA LABOR CODE § 510 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (11) VIOLATION OF CALIFORNIA LABOR CODE §§ 1182, ET SEQ., 1197, 1197.1, AND 1194 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (12) VIOLATION OF CALIFORNIA LABOR CODE § 512 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (13) VIOLATION OF CALIFORNIA LABOR CODE §§ 1198 AND 558 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.);**
- (14) VIOLATION OF CALIFORNIA LABOR CODE § 226.7 BROUGHT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB. CODE § 2698, ET SEQ.); AND**
- (15) VIOLATION OF CALIFORNIA**

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**LABOR CODE § 2802 BROUGHT
UNDER THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (CAL. LAB. CODE §
2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff Bradley Herman ("Plaintiff"), individually and on behalf of other
2 members of the public similarly situated, and asserts claims against defendants Los Angeles
3 Engineering, Inc. ("LA Engineering" or "Defendant") and Does 1 through 10, inclusive
4 (collectively "Defendants") as follows:

5 **NATURE AND SUMMARY OF THE ACTION**

6 1. This is a wage and hour class action brought against LA Engineering by a former
7 employee under California law. LA Engineering is a general construction contractor in the
8 Southern California area. LA Engineering's project base includes everything from simple road
9 work, to work on bridges, parks, landscaping, sewage-pump plants, pipelines, and other complex
10 projects. Plaintiff is a Laborer/Pipe Layer with LA Engineering. This action alleges routine and
11 systematic violations of California's Labor Code by Defendants and seeks to remedy the
12 Defendants' violations of law, including the California Labor Code, that have caused substantial
13 losses to Plaintiff and other employees of LA Engineering.

14 2. Compliance with the California Labor Code assures that the employees of
15 companies operating in California are compensated and treated justly. The California Labor
16 Code is a tool used to safeguard the rights of the workers from unjust employers. This action
17 seeks appropriate penalties and other relief for significant violations of the California Labor Code
18 by Defendants.

19 **JURISDICTION AND VENUE**

20 3. This class action is brought pursuant to California Code of Civil Procedure § 382.
21 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits
22 of the Superior Court and will be established according to proof at trial.

23 4. This Court has jurisdiction over this action pursuant to the California Constitution,
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
25 given by statute to other courts. The statutes under which this action is brought do not give
26 jurisdiction to any other court.

27 5. This Court has jurisdiction over Defendants because, upon information and belief,
28 each defendant is either a resident of California, has sufficient minimum contacts in California, or

1 otherwise intentionally avails itself of the California market so as to render the exercise of
2 jurisdiction over it by the California Courts consistent with traditional notions of fair play and
3 substantial justice.

4 6. Venue is proper in this Court because Plaintiff and, upon information and belief,
5 one or more of the Defendants transact business in this county and the acts or omissions alleged
6 herein took place in this county.

7 **PARTIES**

8 7. Plaintiff was an employee of LA Engineering at relevant times herein.

9 8. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
10 mentioned herein LA Engineering is a corporation licensed and qualified to do business in
11 California. On information and belief, Plaintiff alleges that at all relevant times referenced herein
12 Defendant did and continues to transact business in California.

13 9. Whenever in this complaint reference is made to any act, deed, or conduct of
14 Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or
15 through one or more of its officers, directors, agents, employees, or representatives, who was
16 actively engaged in the management, direction, control, or transaction of the ordinary business
17 and affairs of Defendant.

18 10. Plaintiff is ignorant of the true names and capacities, whether individual,
19 corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 10, inclusive
20 and therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
21 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
22 as the identities of the Doe Defendants have been ascertained.

23 11. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
24 the partners, agents, or principals and co-conspirators of Defendant, and of each other; that
25 Defendant and the Doe Defendants performed the acts and conduct herein alleged directly, aided
26 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
27 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
28 of the liability of the Defendants as alleged herein.

1 16. There is a well defined community of interest in this litigation and the Class and
2 Subclasses are easily ascertainable as set forth below:

3 a. Numerosity: The members of the Class and Subclasses are so numerous
4 that joinder of all Class Members and Subclass Members would be unfeasible and impractical.
5 The membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however,
6 the Class is estimated to be greater than one hundred (100) individuals and the Subclasses are
7 estimated to be greater than fifty (50) individuals and the identity of such membership is readily
8 ascertainable by inspection of Defendants' employment records.

9 b. Typicality: Plaintiff is qualified to, and will fairly and adequately protect
10 the interests of each Class Member and Subclass Members with whom he has a well defined
11 community of interest. Plaintiff's claims herein alleged are typical of those claims which could be
12 alleged by any Class Member and/or Subclass Members, and the relief sought is typical of the
13 relief which would be sought by each of the Class Members and/or Subclass Members in separate
14 actions. All Class Members and Subclass Members have been similarly harmed by being denied
15 minimum wages as well as overtime and regular wages due to Defendants' policies and practices
16 that affected Class Members and Subclass Members similarly. Further, Defendants benefited
17 from the same type of unfair and/or wrongful acts as to each Class Member and Subclass
18 Member.

19 c. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
20 the interests of each Class Member and Subclass Member with whom he has a well defined
21 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
22 that he has an obligation to make known to the Court any relationships, conflicts, or differences
23 with any Class Member and/or Subclass Member. Plaintiff's attorneys and the proposed Class
24 and Subclass counsel are versed in the rules governing class action discovery, certification, and
25 settlement and experienced in handling such matters.

26 d. Superiority: The nature of this action makes the use of class action
27 adjudication superior to other methods. A class action will achieve economies of time, effort,
28 judicial resources, and expense compared to separate lawsuits. The prosecution of separate

1 actions by individual members of the Class and/or Subclasses would create a risk of inconsistent
2 and/or varying adjudications with respect to the individual Class Members and/or Subclass
3 Members, establishing incompatible standards of conduct for the Defendants and resulting in the
4 impairment of the Class Members' and/or Subclass Members' rights and the disposition of their
5 interests through actions to which they were not parties.

6 e. Public Policy Considerations: Employers in the state of California violate
7 employment and labor laws every day. Current employees are often afraid to assert their rights
8 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
9 because they believe their former employers may damage their future endeavors through negative
10 references and/or other means. The nature of this action allows for the protection of current and
11 former employees' rights without fear for retaliation or damage.

12 17. There are common questions of law and fact as to the Class and Subclasses that
13 predominate over questions affecting only individual members including, but not limited to:

14 a. Whether Defendants failed to pay legally required premium overtime
15 compensation to Plaintiff and Class Members for hours Plaintiff and Class Members worked in
16 excess of eight (8) hours per day and forty (40) hours per week;

17 b. Whether Defendants failed to properly calculate the overtime rate for Class
18 Members by, among other things, failing to include all required compensation in computing the
19 regular rate upon which overtime must be based;

20 c. Whether Defendants' failure to pay premium overtime compensation,
21 without abatement or reduction, in accordance with the California Labor Code was willful;

22 d. Whether Defendants failed to timely pay wages during employment in
23 accordance with California Labor Code requirements;

24 e. Whether Defendants failed to pay Plaintiff and Waiting Time Subclass
25 Members all wages earned either at the time of discharge, or within seventy-two (72) hours of
26 their voluntarily leaving Defendants' employ;

27 f. Whether Defendants complied with the wage reporting requirements of the
28 California Labor Code, including, but not limited to, § 226;

- 1 g. Whether Defendants' conduct was willful and/or reckless;
- 2 h. Whether Defendants failed to reimburse Plaintiff and Class Members for
- 3 business expenses incurred in violation of California Labor Code § 2802;
- 4 i. Whether Defendants engaged in unfair competition in violation of
- 5 California Business & Professions Code § 17200, et seq.; and
- 6 j. The appropriate amount of damages, restitution, and/or monetary penalties
- 7 resulting from Defendants' violations of California law.

8 **ALLEGATIONS REGARDING PAGA REPRESENTATIVE ACTION**

9 18. Plaintiff incorporates by reference and realleges each and every allegation

10 contained above, as though fully set forth herein.

11 19. This is a representative action as to Plaintiff's Eighth through Fifteenth Causes of

12 Action only for recovery of penalties under PAGA. *See Arias v. Superior Court*, 46 Cal. 4th 969

13 (2009). PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of himself or

14 herself and other current and/or former employees, on a representative basis, to address an

15 employer's violations of the California Labor Code. In this case, Defendants violated California

16 Labor Code sections §§ 201-202, 226(a), 226.7, 510, 512, 558, 1182 et seq., 1194, 1197, 1197.1,

17 1198, and 2802 as set forth more fully below. Plaintiff seeks PAGA penalties on behalf of

18 himself, Defendants' other current and former California employees, and the State of California.

19 20. Plaintiff's Eighth through Fifteenth Causes of Action are suitable for treatment as

20 representative actions under PAGA for the following reasons:

21 (a) The violations set forth in Plaintiff's Eighth through Fifteenth Causes of

22 Action allege violations of the California Labor Code for which the Code provides a civil penalty

23 to be assessed and recovered by the Labor and Workforce Development Agency ("LWDA") or

24 any department, division, commission, boards, agencies, or employees, or for which a penalty is

25 provided for under Labor Code § 2699(f);

26 (b) Plaintiff is an "aggrieved employee" because he was employed by

27 Defendants and had one or more of the offending violations committed against him;

28

1 (c) Plaintiff seeks to recover PAGA penalties on behalf of himself and other
2 "current and former employees" including but not limited to unpaid or underpaid wages under
3 Labor Code § 1194 and 1199;

4 (d) Plaintiff has complied with the requirement to commence a civil action
5 pursuant to Labor Code § 2699.3;

6 (e) Plaintiff has complied with the exhaustion requirements of PAGA by
7 providing notice by certified letter on July 26, 2012, to Defendants and the LWDA concerning the
8 PAGA claims Plaintiff intends to pursue. More than thirty-three days have elapsed since Plaintiff
9 served the PAGA notice; and

10 (f) "Current and former employees," for the purposes of the PAGA claims,
11 include any and all persons who are or were employed as a technician or equivalent position,
12 however titled, by Defendants in the state of California.

13 **FACTUAL ALLEGATIONS**

14 21. At all times set forth herein, Defendants employed Plaintiff and hourly non-
15 exempt employees in California.

16 22. Defendants employ Plaintiff as a Laborer/Pipe Layer and treat him as an hourly,
17 non-exempt employee.

18 23. Defendants continue to employ Laborers/Pipe Layers and other hourly non-exempt
19 employees throughout the state of California.

20 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
21 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
22 of the requirements of California's wage and employment laws.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
24 should know, knew and/or should have known that Plaintiff and the other class members were
25 entitled to receive proper premium wages for overtime compensation and that they were not
26 receiving proper premium wages for overtime compensation.

27 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants knew that they had a duty to compensate Plaintiff and class members

1 premium wages for overtime compensation, and that Defendants had the financial ability to pay
2 such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so, and
3 falsely represented to Plaintiff and Class Members that they were properly denied wages, all in
4 order to increase Defendants' profits.

5 27. During his employment, Plaintiff and, on information and belief, other Class
6 Members received overtime compensation that failed to properly account for all compensation
7 paid during the work week.

8 28. During his employment, Plaintiff and, on information and belief, other Class
9 Members, were not paid double time for work over 12 hours in a day as required by California
10 law.

11 29. During his employment Plaintiff and, on information and belief, other Class
12 Members, were not provided with meal periods and rest breaks in accordance with California law,
13 due not only to production demands of Defendants and their supervisory personnel, but as a result
14 of a common policy failing to provide for second meal periods.

15 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants willfully failed to timely pay wages to current and former employees in
17 accordance with the requirements of California's Labor Code, including §§ 201 and 202.

18 31. During his employment Plaintiff and, on information and belief, other Class
19 Members, were required to provide their own sophisticated tools and equipment without
20 reimbursement for the use of the same.

21 **FIRST CAUSE OF ACTION FOR FAILURE TO PAY OVERTIME WAGES**

22 **By Plaintiff and Class**

23 32. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 33. At all times relevant, the Industrial Welfare Commission ("IWC") Wage Orders
26 applicable to Plaintiff's and Class Members' employment by Defendants provided that employees
27 working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to
28 overtime compensation at the rate of time-and-one-half his or her regular rate of pay for all hours

1 worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee
2 who works more than twelve (12) hours in a day is entitled to overtime compensation at a rate of
3 two times his or her regular rate of pay.

4 34. California Labor Code § 510 codifies the right to overtime compensation at the
5 rate of time-and-one-half the regular rate of pay for all hours worked in excess of eight (8) hours
6 in a day or forty (40) hours in a work week and to overtime compensation at twice the regular rate
7 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
8 day on the seventh day of work in a particular work week.

9 35. At all times relevant, Plaintiff and Class Members consistently worked in excess of
10 eight (8) hours in a day and/or forty (40) hours in a week.

11 36. At all times relevant, Defendants failed to pay overtime wages owed to Plaintiff
12 and Class Members, including by failing to include all remuneration paid during the workweek in
13 computing the regular rate upon which the overtime rate was based.

14 37. At all times relevant, Plaintiff and Class Members regularly performed non-
15 exempt work in excess of 50% of the time, and thus, were subject to the overtime requirements of
16 the applicable IWC Wage Orders and the California Labor Code.

17 38. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
18 premium overtime compensation violates the provisions of California Labor Code §§ 510 and
19 1198 and the applicable IWC Wage Orders and is therefore unlawful.

20 39. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and
21 have failed and refused, and continue to fail and refuse, to pay Plaintiff and Class Members the
22 overtime wages owed.

23 40. Pursuant to California Labor Code § 1194, Plaintiff and Class Members are
24 entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys'
25 fees.

1 contained above, as though fully set forth herein.

2 47. California Labor Code § 226(a) sets forth reporting requirements for employers
3 when they pay wages:

4 Every employer shall, semimonthly or at the time of each payment of wages,
5 furnish each of his or her employees, either as a detachable part of the check, draft,
6 or voucher paying the employee's wages, or separately when wages are paid by
7 personal check or cash, an accurate itemized statement in writing showing (1)
8 gross wages earned, (2) total hours worked by the employee, except for any
9 employee whose compensation is solely based on a salary and who is exempt from
10 payment of overtime under subdivision (a) of Section 515 or any applicable order
11 of the Industrial Welfare Commission, (3) the number of piece-rate units earned
12 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
13 deductions, provided that all deductions made on written orders of the employee
14 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
15 dates of the period for which the employee is paid, (7) the name of the employee
16 and the last four digits of his or her social security number or an employee
17 identification number other than a social security number, (8) the name and
18 address of the legal entity that is the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682, the name and address of
20 the legal entity that secured the services of the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours
22 worked at each hourly rate by the employee. The deductions made from payment
23 of wages shall be recorded in ink or other indelible form, properly dated, showing
24 the month, day, and year, and a copy of the statement and the record of the
25 deductions shall be kept on file by the employer for at least three years at the place
26 of employment or at a central location within the State of California.

18 California Labor Code § 226(e) provides:

19 An employee suffering injury as a result of a knowing and intentional failure by an
20 employer to comply with subdivision (a) is entitled to recover the greater of all
21 actual damages or fifty dollars (\$50) for the initial pay period in which a violation
22 occurs and one hundred dollars (\$100) per employee for each violation in a
23 subsequent pay period, not exceeding an aggregate penalty of four thousand
24 dollars (\$4,000), and shall be entitled to an award of costs and reasonable
25 attorney's fees.

24 48. Defendants intentionally failed, and continue to fail, to furnish Plaintiff and
25 Paystub Subclass Members complete and accurate wage statements upon each payment of wages
26 in violation of California Labor Code § 226(a). Plaintiff and Paystub Subclass Members were
27 injured and damaged by these failures because, among other things, these failures led them to
28 believe that they were not entitled to be paid wages for all hours they worked as we all as

1 overtime premium pay, although they were so entitled. Defendants' failure to comply with Labor
2 Code § 226(a) also hindered Plaintiff and Paystub Subclass Members from determining the
3 amounts of wages actually owed to them.

4 49. Defendants will no doubt continue these illegal practices until such time as they
5 are forced to pay penalties in compliance with Labor Code § 226(e).

6 50. Plaintiff and Paystub Subclass Members, are entitled to recover statutory penalties,
7 interest, and attorneys' fees and costs pursuant to Labor Code § 226(e).

8 **FOURTH CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS**

9 **By Plaintiff and Class**

10 51. Plaintiff incorporates by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 52. Pursuant to California Labor Code § 512, no employer shall employ an employee
13 for a work period of more than five (5) hours without providing a meal break of not less than
14 thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may
15 not employ an employee for a work period of more than ten (10) hours per day without providing
16 the employee with a second meal period of not less than thirty (30) minutes, except that if the
17 total hours worked is no more than twelve (12) hours, the second meal period may be waived by
18 mutual consent of the employer and the employee only if the first meal period was not waived.

19 53. Pursuant to the IWC Wage Orders applicable to Plaintiff's and Class Members'
20 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
21 the work of the employee must prevent an employee from being relieved of all duties relating to
22 his or her work for the employer and the employee must consent in writing to the "on duty" meal
23 period. Plaintiff and Class Members did not consent in writing to an "on duty" meal period.
24 Further, the nature of the work of Plaintiff and Class Members was not such that Plaintiff and
25 Class Members are prevented from being relieved of all duties. Despite said requirements of the
26 IWC Wage Orders applicable to Plaintiff's and Class Members' employment by Defendants and
27 California Labor Code §§ 512 and 226.7, Plaintiff and Class Members were not provided with
28 meal periods and were not relieved of all duties during any meal periods Plaintiff and Class

1 Members did take.

2 54. For the four (4) years preceding the filing of this Complaint, Defendants failed to
3 provide Plaintiff and Class Members second meal breaks of not less than thirty (30) minutes
4 pursuant to the IWC Wage Orders applicable to Plaintiff's and Class Members' employment by
5 Defendants. As a proximate result of the aforementioned violations, Plaintiff and Class Members
6 have been damaged in an amount according to proof at time of trial.

7 55. Pursuant to California Labor Code § 226.7, Plaintiff and Class Members are
8 entitled to recover one hour of premium pay for each day in which a meal period was not
9 provided.

10 **FIFTH CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS**

11 **By Plaintiff and Class**

12 56. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 57. Pursuant to the IWC Wage Orders applicable to Plaintiff's and Class Members'
15 employment by Defendants:

16 Every employer shall authorize and permit all employees to take rest periods,
17 which insofar as practicable shall be in the middle of each work period. The
18 authorized rest period time shall be based on the total hours worked daily at the
19 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof ...
Authorized rest period time shall be counted, as hours worked, for which there
shall be no deduction from wages.

20 California Labor Code § 226.7 (a) prohibits an employer from requiring any employee to work
21 during any rest period mandated by an applicable order of the IWC. Defendants were required to
22 authorize and permit employees such as Plaintiff and Class Members to take rest periods, based
23 upon the total hours worked at a rate of ten (10) minutes net rest per four (4) hours or major
24 fraction thereof, with no deduction from wages. Despite said requirements of the IWC Wage
25 Orders applicable to Plaintiff's and Class Members' employment by Defendants, Defendants
26 failed and refused to authorize and permit Plaintiff and Class Members to take 10-minute rest
27 periods for every four hours worked, or major fraction thereof.

28 58. For the four (4) years preceding the filing of this complaint, Defendants failed to

1 provide Plaintiff and Class Members the required rest periods pursuant to the IWC Wage Orders
2 applicable to Plaintiff's and Class Members' employment by Defendants and California Labor
3 Code § 226.7. As a proximate result of the aforementioned violations, Plaintiff and Class
4 Members have been damaged in an amount according to proof at time of trial.

5 59. Pursuant to Labor Code and § 226.7, Plaintiff and Class Members are entitled to
6 recover one hour of premium pay for each day in which a rest period was not provided.

7 **SIXTH CAUSE OF ACTION FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 **By Plaintiff and Class**

9 60. Plaintiff incorporates by reference and realleges each and every allegation
10 contained above, as though fully set forth herein.

11 61. California Labor Code § 2802 provides in pertinent part that: "An employer shall
12 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
13 in direct consequence of the discharge of his or her duties"

14 62. For the four year period preceding the filing of this Complaint, Plaintiff and Class
15 Members have been required to incur and pay for expenses in the discharge of their employment
16 duties including, but not limited to, purchasing and use of specialized tools and equipment, all
17 without reimbursement from Defendants.

18 63. As a proximate result of Defendants' violations of Labor Code § 2802, Plaintiff
19 and Class Members have been damaged in an amount according to proof.

20 64. Plaintiff and Class Members, are entitled to recover the full amount of the
21 expenses they incurred in the course of their job duties, plus interest, attorneys' fees and costs
22 pursuant to Labor Code § 2802.

23 **SEVENTH CAUSE OF ACTION FOR UNFAIR COMPETITION**

24 **By Plaintiff and Class**

25 65. Plaintiff repeats and incorporates herein by reference each and every allegation
26 contained above, as though fully set forth herein.

27 66. Defendants' conduct, as alleged in this Complaint, has been, and continues to be,
28 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the

1 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
2 meaning of California Code of Civil Procedure § 1021.5.

3 67. Defendants' policies, activities, and actions as alleged herein are violations of
4 California law and constitute unlawful business acts and practices in violation of California
5 Business and Professions Code §§ 17200, et seq.

6 68. A violation of California Business and Professions Code §§ 17200, et seq. may be
7 predicated on the violation of any state or federal law. In the instant case, Defendants' policies
8 and practices of failing to pay Plaintiff and Class Members overtime wages, among the other
9 statutory violations alleged herein, over the past four years violates California Labor Code §§
10 1198, 2802, 510, 512, 203, and 226.

11 69. Plaintiff and Class Members have been personally aggrieved by Defendants'
12 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
13 property.

14 70. Pursuant to California Business and Professions Code § 17200, et seq., Plaintiff
15 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
16 during a period that commences four years prior to the filing of this Complaint; an award of
17 attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, and an award of costs.

18 **REPRESENTATIVE ACTION CLAIMS**

19 **EIGHTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE §**
20 **226(a) BROUGHT UNDER PAGA**

21 **By Plaintiff on a Representative Basis**

22 71. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 72. California Labor Code § 226(a) sets forth the following reporting requirements for
25 employers when they pay wages:

26 Every employer shall ... at the time of each payment of wages, furnish each of his
27 or her employees ... an accurate itemized statement in writing showing (1) gross
28 wages earned, (2) total hours worked by the employee, except for any employee
whose compensation is solely based on a salary and who is exempt from payment
of overtime under subdivision (a) of Section 515 or any applicable order of the
Industrial Welfare Commission, (3) the number of piece-rate units earned and any

1 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
2 deductions, provided that all deductions made on written orders of the employee
3 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
4 dates of the period for which the employee is paid, (7) the name of the employee
5 and his or her social security number, except that by January 1, 2008, only the last
6 four digits of his or her social security number or an employee identification
7 number other than a social security number may be shown on the itemized
8 statement, (8) the name and address of the legal entity that is the employer, and
9 (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee. The
11 deductions made from payments of wages shall be recorded in ink or other
12 indelible form, properly dated, showing the month, day, and year, and a copy of
13 the statement or a record of the deductions shall be kept on file by the employer
14 for at least three years at the place of employment or at a central location within
15 the State of California.

16 73. Defendants furnished and continue to furnish Plaintiff and many of their other
17 California employees with wage statements that violate the requirements of California Labor
18 Code § 226(a). Specifically, the itemize wage statements that Defendants provided to Plaintiff
19 and Class Members did not meet the requirements of Section 226(a), including, but not limited to,
20 failing to: (1) accurately display all gross wages earned; (2) accurately display all hours worked;
21 (3) accurately display net wages earned; and (4) accurately display all hourly rates.

22 74. A violation of California Labor Code § 226(a) gives rise to a private right of action
23 under PAGA.

24 75. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself
25 or herself and other current or former employees as a result of the employer's violations of certain
26 sections of the California Labor Code. Because Plaintiff is, or was within the year preceding the
27 original complaint, employed by Defendants and has received wage statements that do not
28 comply with California Labor Code § 226(a), Plaintiff is an aggrieved employee under PAGA.

76. PAGA, specifically California Labor Code § 2699(f), establishes a civil penalty to
be levied against California employers for violations of California Labor Code provisions that do
not contain their own civil penalties. California Labor Code § 2699(f)(2) provides that "[i]f,
at the time of the alleged violation, an employer employs one or more employees, the civil penalty
is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation

1 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
2 violation." California Labor Code § 226(a) does not provide for its own civil penalties.

3 77. Because Defendants are employers that currently employ one or more employees,
4 the civil penalties set forth in California Labor Code § 2699(f)(2) apply to each of Defendants'
5 violations of California Labor Code § 226(a).

6 78. Plaintiff requests penalties against Defendants for their violation of California
7 Labor Code § 226(a) as provided under PAGA, plus reasonable attorneys' fees and costs, in
8 amounts to be proved at trial.

9 **NINTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE §§**
10 **201 AND 202 BROUGHT UNDER PAGA**

11 **By Plaintiff on a Representative Basis**

12 79. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 80. California Labor Code §§ 201 and 202 requires employees to be paid all wages
15 owed on termination.

16 81. During the year preceding the filing of the original complaint through the present,
17 Defendants failed to timely pay all wages owed upon termination in accordance with California
18 Labor Code §§ 201 and 202. Instead, Defendants withheld payment of final wages to Plaintiff
19 and other employees. In addition, the final wages were incorrect so not all wages due and owing
20 were paid to Plaintiff and other California employees.

21 82. PAGA, specifically California Labor Code § 2699(a), allows Plaintiff to recover
22 civil penalties for the violation of provisions of the Labor Code that contain their own civil
23 penalties. California Labor Code § 2699 contains the civil penalties for violations of California
24 Labor Code §§ 201 and 202. Accordingly, Plaintiff seeks the civil penalties set forth in
25 California Labor Code § 2699 for Defendants' violations of California Labor Code §§ 201 and
26 202.

1 83. Because Defendants are employers that currently employ one or more employees,
2 the civil penalties set forth in California Labor Code § 2699(f)(2) apply to each of Defendants'
3 violations of California Labor Code §§ 201 and 202.

4 84. Plaintiff requests penalties against Defendants for their violation of California
5 Labor Code §§ 201 and 202 as provided under PAGA, plus reasonable attorneys' fees and costs,
6 in amounts to be proved at trial.

7 **TENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE § 510**
8 **BROUGHT UNDER PAGA**

9 **By Plaintiff on a Representative Basis**

10 85. Plaintiff incorporates by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 86. Defendants failed to pay required overtime and double-time compensation in
13 accordance with California Labor Code §510.

14 87. During the year preceding the filing of the original complaint through the present,
15 Defendants failed to compensate Plaintiff and other California employees a proper overtime rate
16 for hours worked in excess of eight (8) in a day or forty (40) in a week, and failed to pay Plaintiff
17 and other California employees double time for hours worked in excess of twelve (12) in one day.
18 These violations occurred in part due to Defendants' systematic practice of requiring employees
19 to work off-the-clock.

20 88. PAGA, specifically California Labor Code § 2699(a), allows Plaintiff to recover
21 civil penalties for the violation of provisions of the Labor Code that contain their own civil
22 penalties. California Labor Code § 2699 and/or § 558 contains the civil penalties for violations of
23 California Labor Code § 510. Accordingly, Plaintiff seeks the civil penalties set forth in
24 California Labor Code § 2699 and/or § 558 for Defendants' violations of California Labor Code §
25 510.

26 89. Plaintiff requests penalties against Defendants for their violation of California
27 Labor Code § 510 as provided under PAGA, plus reasonable attorneys' fees and costs, in amounts
28 to be proved at trial.

1 **ELEVENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE**
2 **§§ 1182, ET SEQ., 1197, 1197.1, and 1194 BROUGHT UNDER PAGA**

3 **By Plaintiff on a Representative Basis**

4 90. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 91. During the year preceding the filing of the original complaint through the present,
7 Defendants failed to pay Plaintiff and Class Members for all hours worked and failed to pay
8 Plaintiff and Class Members minimum wage for all hours worked in violation of California Labor
9 Code §§ 1182, et seq., 1197, 1197.1, and 1194, as well as the applicable IWC wage orders.

10 92. PAGA, specifically California Labor Code § 2699(a), allows Plaintiff to recover
11 civil penalties for the violation of provisions of the Labor Code that contain their own civil
12 penalties. California Labor Code § 1197.1 contains the civil penalties for violations of California
13 Labor Code §§ 1182, et seq., 1197, and 1197.1. Accordingly, Plaintiff seeks the civil penalties
14 and restrictions of wages as set forth in California Labor Code § 1197.1 for Defendants' violations
15 of California Labor Code §§ 1182, et seq., 1197, and 1197.1.

16 93. Plaintiff requests penalties against Defendants for their violation of California
17 Labor Code § 1182, *et seq.*, 1194, 1197 and 1197.1 as provided under PAGA, plus reasonable
18 attorneys' fees and costs, in amounts to be proved at trial.

19 **TWELFTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE §**
20 **512 BROUGHT UNDER PAGA**

21 **By Plaintiff on a Representative Basis**

22 94. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 95. California Labor Code § 512 provides that no employer shall employ an employee
25 for a work period of more than five hours without providing a meal break of not less than thirty
26 minutes in which the employee is relieved of all of his or her duties. An employer may not
27 employ an employee for a work period of more than ten hours per day without providing the
28 employee with a second meal period of not less than thirty minutes, except that if the total hours

1 worked is no more than twelve hours, the second meal period may be waived by mutual consent
2 of the employer and the employee only if the first meal period was not waived.

3 96. During the year preceding the filing of the original complaint through the present,
4 Defendants failed to provide first and sometimes second meal periods to Plaintiff and Class
5 Members in violation of California Labor Code § 512.

6 97. PAGA, specifically California Labor Code § 2699(f), establishes a civil penalty to
7 be levied against California employers for violations of California Labor Code provisions that do
8 not contain their own civil penalties. California Labor Code § 2699(f)(2) provides that "[i]f, at
9 the time of the alleged violation, an employer employs one or more employees, the civil penalty
10 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation." California Labor Code § 558 provides civil penalties for violations of the Chapter in
13 which California Labor Code § 512 appears.

14 98. Because Defendants are employers that currently employ one or more employees,
15 the civil penalties set forth in California Labor Code § 2699(f)(2) apply to each of Defendants'
16 violations of California Labor Code § 512.

17 99. Plaintiff requests penalties against Defendants for their violation of California
18 Labor Code § 512 as provided under PAGA, plus reasonable attorneys' fees and costs, in amounts
19 to be proved at trial.

20 **THIRTEENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR**
21 **CODE §§ 1198 AND 558 BROUGHT UNDER PAGA**

22 **By Plaintiff on a Representative Basis**

23 100. Plaintiff incorporates by reference and realleges each and every allegation
24 contained above, as though fully set forth herein.

25 101. California Labor Code § 1198 provides that "the employment of an employee ...
26 under conditions of labor prohibited by the [wage] order is unlawful." California Labor Code §
27 558 provides for a penalties where "[a]ny employer ... violates ... any provision regulating hours
28 and days of work in any order of the Industrial Welfare Commission...."

1 102. During the year preceding the filing of the original complaint through the present,
2 Defendants failed to pay and appropriately calculate Plaintiff and Class Members' overtime pay
3 and overtime rate in violation of Paragraph 3 of the applicable California IWC Wage Order. By
4 failing to pay and appropriately calculate Plaintiff and Class Members' overtime, Defendants
5 violated Paragraph 3 of the applicable California IWC Wage Order and therefore violated
6 California Labor Code §§ 1198 and/or 558.

7 103. During the year preceding the filing of the original complaint through the present,
8 Defendants failed to provide meal periods to Plaintiff and Class Members in violation of
9 Paragraph 11 of the applicable California IWC Wage Order [Wage Orders 4-2001, 6-2001, 7-
10 2001, and 9-2001]. By failing to provide meal periods to Plaintiff and Class Members in
11 violation of Paragraph 11 of the applicable California IWC Wage Order, Defendants violated
12 California Labor Code §§ 1198 and/or 558.

13 104. During the year preceding the filing of the original complaint through the present,
14 Defendants also failed to provide rest periods to Plaintiff and Class Members in violation of
15 Paragraph 12 of the applicable California IWC Wage Order [Wage Orders 4-2001, 6-2001, 7-
16 2001, and 9-2001]. By failing to provide rest periods to Plaintiff and Class Members in violation
17 of Paragraph 12 of the applicable California IWC Wage Order, Defendants violated California
18 Labor Code §§ 1198 and/or 558.

19 105. PAGA, specifically California Labor Code § 2699(f), establishes a civil penalty to
20 be levied against California employers for violations of California Labor Code provisions that do
21 not contain their own civil penalties. California Labor Code § 2699(f)(2) provides that "[i]f, at
22 the time of the alleged violation, an employer employs one or more employees, the civil penalty
23 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
24 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation." California Labor Code § 1198 does not provide its own civil penalties.

26 106. Because Defendants are employers that currently employ one or more employees,
27 the civil penalties set forth in California Labor Code § 2699(f)(2) apply to each of Defendants'
28 violations of California Labor Code § 1198.

1 107. PAGA, specifically California Labor Code § 2699(a), allows Plaintiff to recover
2 civil penalties for the violation of provisions of the Labor Code that contain their own civil
3 penalties. California Labor Code § 558 contains its own civil penalties. Accordingly, Plaintiff
4 seeks the civil penalties, including all unpaid wages, set forth in California Labor Code § 2699(a)
5 for Defendants' violations of California Labor Code § 558.

6 108. Plaintiff requests penalties against Defendants for their violation of California
7 Labor Code §§ 1198 and/or 558 as provided under PAGA, plus reasonable attorneys' fees and
8 costs, in amounts to be proved at trial.

9 **FOURTEENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR**
10 **CODE § 226.7 BROUGHT UNDER PAGA**

11 **By Plaintiff on a Representative Basis**

12 109. Plaintiff incorporates by reference and realleges each and every allegation
13 contained above, as though fully set forth herein.

14 110. California Labor Code § 226.7 provides in pertinent part that "[n]o employer shall
15 require any employee to work during any meal or rest period mandated by an applicable order of
16 the Industrial Welfare Commission."

17 111. During the year preceding the filing of the original complaint through the present,
18 Defendants failed to provide meal and rest periods to Plaintiff and Class Members in violation of
19 Paragraphs 11 and 12 of the applicable California IWC Wage Order. By failing to provide meal
20 and rest periods to Plaintiff and Class Members in violation of Paragraph 11 and 12 of the
21 applicable California IWC Wage Order, Defendants violated California Labor Code § 226.7.

22 112. PAGA, specifically California Labor Code § 2699(f), establishes a civil penalty to
23 be levied against California employers for violations of California Labor Code provisions that do
24 not contain their own civil penalties. California Labor Code § 2699(f)(2) provides that "[i]f, at
25 the time of the alleged violation, an employer employs one or more employees, the civil penalty
26 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
27 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
28 violation." California Labor Code § 226.7 does not provide its own civil penalties.

1 113. Because Defendants are employers that currently employ one or more employees;
2 the civil penalties set forth in California Labor Code § 2699(f)(2) apply to each of Defendants'
3 violations of California Labor Code § 226.7.

4 114. Plaintiff requests penalties against Defendants for their violation of California
5 Labor Code § 226.7 as provided under PAGA, plus reasonable attorneys' fees and costs, in
6 amounts to be proved at trial.

7 **FIFTEENTH CAUSE OF ACTION FOR VIOLATION OF CALIFORNIA LABOR CODE**
8 **§ 2802 BROUGHT UNDER PAGA**

9 **By Plaintiff on a Representative Basis**

10 115. Plaintiff incorporates by reference and realleges each and every allegation
11 contained above, as though fully set forth herein.

12 116. During the year preceding the filing of the original complaint through the present,
13 Defendants failed to fully compensate Plaintiff and Class Members for business expenses,
14 including power tools, specialty tools, and related accessories, all in violation of California Labor
15 Code § 2802.

16 117. California Labor Code § 2802 provides in pertinent part that: "An employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties...."

19 118. PAGA, specifically California Labor Code § 2699(a), allows Plaintiff to recover
20 civil penalties for the violation of provisions of the Labor Code that contain their own civil
21 penalties. California Labor Code § 2802 contains its own civil penalties. Accordingly, Plaintiff
22 seeks the civil penalties set forth in California Labor Code § 2699(a) for Defendants' violations of
23 California Labor Code § 2802.

24 119. Plaintiff requests penalties against Defendants for their violation of California
25 Labor Code § 2802 as provided under PAGA, plus reasonable attorneys' fees and costs, in
26 amounts to be proved at trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment against Defendants, as follows:

3 **Class Certification**

- 4 1. That this action be certified as a class action;
- 5 2. That Plaintiff be appointed as the representative of the Class;
- 6 3. That Plaintiff be appointed as the representative of the Subclasses; and
- 7 4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

8 **On the First Cause of Action**

- 9 1. For compensatory damages in an amount equal to the amount of unpaid overtime
- 10 compensation owed to Plaintiff and Class Members;
- 11 2. For pre-judgment interest on any unpaid overtime compensation due from the day
- 12 that such amounts were due;
- 13 3. For reasonable attorneys' fees and costs pursuant to Labor Code § 1194; and
- 14 4. For such other and further relief as the Court deems proper.

15 **On the Second Cause of Action**

- 16 1. For statutory penalties pursuant to California Labor Code § 203; and
- 17 2. For such other and further relief as the Court deems proper.

18 **On the Third Cause of Action**

- 19 1. For statutory damages measured at \$50 for the first violation, and \$100 for every
- 20 subsequent violation, pursuant to California Labor Code § 226(e);
- 21 2. For reasonable attorneys' fees and costs pursuant to California Labor Code
- 22 § 226(e); and
- 23 3. For such other and further relief as the Court deems proper.

24 **On the Fourth Cause of Action**

- 25 1. For one hour of premium pay for each day in which a required meal period was
- 26 not provided; and
- 27 2. For such other and further relief as the Court deems proper.
- 28

1 On the Eighth Cause of Action

- 2 1. For penalties according to proof;
3 2. For reasonable attorneys' fees and costs of suit; and
4 3. For such other and further relief as the Court deems proper.

5 On the Ninth Cause of Action

- 6 1. For penalties according to proof;
7 2. For reasonable attorneys' fees and costs of suit; and
8 3. For such other and further relief as the Court deems proper.

9 On the Tenth Cause of Action

- 10 1. For penalties according to proof;
11 2. For reasonable attorneys' fees and costs of suit; and
12 3. For such other and further relief as the Court deems proper.

13 On the Eleventh Cause of Action

- 14 1. For penalties according to proof;
15 2. For reasonable attorneys' fees and costs; and
16 3. For such other and further relief as the Court deems proper.

17 On the Twelfth Cause of Action

- 18 1. For penalties according to proof;
19 2. For reasonable attorneys' fees and costs; and
20 3. For such other and further relief as the Court deems proper.

21 On the Thirteenth Cause of Action

- 22 1. For penalties according to proof;
23 2. For reasonable attorneys' fees and costs; and
24 3. For such other and further relief as the Court deems proper.

25 On the Fourteenth Cause of Action

- 26 1. For penalties according to proof;
27 2. For reasonable attorneys' fees and costs; and
28 3. For such other and further relief as the Court deems proper.

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On the Fifteenth Cause of Action

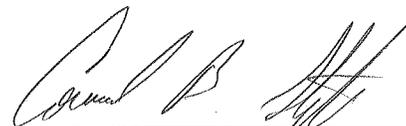
1. For penalties according to proof;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, Class Members, and Subclass Members demand a trial by jury in this matter.

Dated: August 31, 2012

JAMES HAWKINS APLC
ROBBINS UMEDA LLP
THE DENTE LAW FIRM

By: 

CONRAD B. STEPHENS (SB# 266790)

Attorneys for Plaintiff Bradley Herman
and for Class Members and SubClass Members

DECLARATION OF SERVICE BY OVERNIGHT DELIVERY

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 600 B Street, Suite 1900, San Diego, California 92101.

2. On August 31, 2012, I deposited in a box or other facility regularly maintained by UPS, an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, the foregoing document in an envelope designated by the said express service carrier for guaranteed next day delivery, with delivery fees paid or provided for, addressed to the following parties:

ATKINSON, ANDELSON, LOYA,
RUUD & ROMO
JON M. SETOGUCHI
12800 Center Court Drive, Suite 300
Cerritos, California 90703

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this August 31, 2012, at San Diego, California.



HEATHER J. LOTTES