

DEC 30 2014

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF LOS ANGELES BC 568019

JESUS BIBRIESCA and JOSE MOLINA as
individuals and on behalf of all similarly
situated employees

Plaintiff,

v.

QVEST SANITATION, LLC, SOUTHEAST
PERSONNEL LEASING, INC. and DOES 1
through 50, inclusive

Defendants

Case No.:

Assigned for all purposes to Judge:
The Hon.
Dept:

**Class Action Complaint For Damages
Injunctive Relief and Restitution**

1. **Failure to Pay Overtime Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Keep Accurate Payroll Records;**
5. **Failure to Pay Wages Upon Ending Employment;**
6. **Unfair Competition (Business and Professions Code § 17200 et seq.); and**
7. **Failure To Reimburse For Necessary Expenditures (Labor Code § 2802);**

Complaint Filed:
Trial Date: None Set

Request for Jury Trial

1 Plaintiffs JESUS BIBRIESCA AND JOSE MOLINA (hereinafter "BIBRIESCA,"
2 "MOLINA" or "Plaintiffs" collectively) on behalf of himself and all others similarly situated,
3 complain and alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. This is a class action brought on behalf of Plaintiffs JESUS BIBRIESCA AND
7 JOSE MOLINA (hereinafter "BIBRIESCA," "MOLINA" or "Plaintiffs" collectively) and the
8 class they seek to represent ("Plaintiff Class"), as defined herein, as all non-exempt employees
9 employed by or formerly employed by QVEST SANITATION, LLC and SOUTHEAST
10 PERSONNEL LEASING, INC (hereinafter "QVEST," "SPLI" or "Defendants" collectively) .
11 The non-exempt employees employed by or formerly employed by QVEST and SPLI within the
12 State of California are hereinafter referred to as "Plaintiff Class."

13 2. Plaintiffs individually and on behalf they class he seeks to represent, seek relief
14 against QVEST and SPLI for the failure to pay all wages due in violation of *Labor Code* §§ 510
15 and 1194, including both regular and overtime wages; the failure to provide meal and rest
16 periods or compensation in lieu thereof pursuant to *Labor Code* §§ 226.7, 512, Sections 11 and
17 12 of the IWC Wage Orders, and *Cal. Code Regs.*, Title 8, § 11000 et seq.; the failure to pay
18 wages of terminated or resigned employees pursuant to *Labor Code* §§ 201-203; the failure to
19 provide accurate itemized wage statements upon payment of wages pursuant to *Labor Code* §
20 226(a), 1174, 1175, and § 7 of the IWC Wage Orders. Plaintiffs further seeks equitable remedies
21 in the form of declaratory relief and injunctive relief, and relief under the *Bus. & Prof. Code* §§
22 17200 et seq. for unfair business practices.

23 3. The "Class Period" is defined as the four (4) years prior to the filing of the
24 Complaint through the date final judgment is entered. Plaintiffs reserve the right to amend this
25 Complaint to reflect a different "Class Period" as further discovery is conducted.

26 4. At all relevant times herein, QVEST, SPLI and each Defendant, have consistently
27 maintained and enforced against Plaintiff Class the following unlawful practices and policies: a)
28 willfully refusing to pay Plaintiffs and Plaintiff Class for all hours worked, including both

1 regular and overtime; b) willfully refusing to permit Plaintiffs and Plaintiff Class from taking
2 meal and/or rest periods or compensation in lieu thereof; c) willfully refusing to compensate
3 Plaintiff and certain members of the Plaintiff Class wages due and owing at the time Plaintiffs'
4 and Plaintiff Class' employment with QVEST and SPLI ended; d) willfully refusing to furnish to
5 Plaintiffs and Plaintiff Class accurate itemized wage statements upon payment of wages.

6 **II.**

7 **JURISDICTION AND VENUE**

8 5. Venue is proper in this Judicial district and the County of Los Angeles, because
9 Defendants maintain their location and transacts business in this county, the obligations and
10 liability arise in this county, and work was performed by Plaintiffs and members of the proposed
11 class made the subject of this action in the County of Los Angeles, California.

12 6. The California Superior Court has jurisdiction in the matter because the individual
13 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional amount
14 in controversy threshold for Federal Court, and, upon information and belief, Plaintiff and
15 Defendants are residents of and/or domiciled in the State of California. Further, there is no
16 federal question at issue because the issues herein are based solely on California Statutes and
17 law, including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of
18 Civil Procedure, Rules of Court, and Business and Professions Code.

19 **III.**

20 **THE PARTIES**

21 **A. The Plaintiff**

22 7. Plaintiffs at various relevant times herein, was an employee of the Defendants and
23 entitled to compensation for all hours worked, overtime compensation, and penalties from
24 Defendants. Plaintiff was employed by the Defendants for at least four (4) years prior to the
25 commencement of this action, in the County of Los Angeles at various times herein relevant.
26 Plaintiffs were employed by the Defendants during the Class Period in a non-exempt hourly
27 position. Each of the Plaintiff Class members are identifiable, current and/or formerly similarly
28

1 situated persons who were employed in non-exempt hourly positions in California for the
2 Defendants during the Class Period.

3 **B. The Defendant**

4 8. Plaintiffs are informed and believes, and based thereon alleges that, “QVEST and
5 SPLI” is and/or was the employer of the Plaintiffs and Plaintiff Class during the Class Period.
6 During the liability period, QVEST and SPLI employed Plaintiffs and similarly situated persons
7 and failed to pay Plaintiff and Plaintiff Class for all hours worked including overtime premium
8 for overtime hours worked, failed to provide meal periods or pay a meal period penalty in lieu of,
9 failed to provide rest periods or pay a rest period penalty in lieu of, and failed to pay due and
10 owing wages upon ending of employment for employees within California. On information and
11 belief, and based thereon alleges that QVEST and SPLI is conducting business in good standing
12 in California.

13 9. Plaintiffs are informed and believes, and based thereon alleges, that each of the
14 Defendants sued herein was, at all relevant times hereto, the employer, owner, shareholder,
15 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
16 agent, joint employer and/or alter-ego of the remaining Defendants, and was acting, at least in
17 part, within the course and scope of such employment and agency, with the express and implied
18 permission, consent and knowledge, approval and/or ratification of the other Defendants. The
19 above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted,
20 approved, authorized and/or ratified the unlawful acts described herein.

21 10. Plaintiff is informed and believes, and based thereon alleges, that during the
22 Class Period, Defendants QVEST and SPLI were joint employers of Plaintiff and Plaintiff
23 Class. Upon information and belief, when Plaintiff started his employment, he was jointly
24 employed by Defendants QVEST and SPLI. Upon information and belief, Plaintiff further
25 alleges that during the Class Period, Defendants QVEST and SPLI exercised control over the
26 wages, hours and working conditions of Plaintiff and Plaintiff Class, and exercised hiring and
27 firing authority over Plaintiff and Plaintiff Class.
28

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned there existed a unity of ownership and interest between Defendants QVEST and SPLI, such that any individually and separateness between these two named defendants has ceased and each is the alter ego of the other.

12. Plaintiffs are ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief allege that said Defendant is legally responsible for the payment of overtime compensation, rest and meal period compensation and/or *Labor Code* § 203 penalties to the Plaintiff Class members by virtue of their unlawful practices, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the Defendants when ascertained.

13. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant legally attributable to the other Defendant.

IV.

GENERAL ALLEGATIONS

14. California *Labor Code* § 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

15. Further, *Business and Professions Code* § 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. *Business and Professions Code* § 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

16. During all, or a portion of the Class Period, Plaintiffs and each member of the Plaintiff Class was employed by Defendants and each of them, in the State of California.

1 Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under
2 one or more Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 510, and/or
3 other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not
4 subject to an exemption for executive, administrative and professional employees, which
5 imposed obligations on the part of the Defendants to pay Plaintiff and Plaintiff Class members
6 lawful overtime compensation. Plaintiff and Plaintiff Class were covered by one or more
7 Industrial Welfare Commission (IWC) Wage Orders, and *Labor Code* § 226.7 and other
8 applicable wage orders, regulations and statutes which imposed an obligation on the part of the
9 Defendants to pay Plaintiff and Plaintiff Class rest and meal period compensation.

10 17. During the Class Period, Defendants were obligated to pay Plaintiff and Plaintiff
11 Class members for all hours worked.

12 18. During the Class Period, Defendants were obligated to pay Plaintiff and
13 Plaintiff Class members overtime compensation for all hours worked over eight (8) hours of
14 work in one (1) day or forty (40) hours in one (1) week, and double-time for hours worked in
15 excess of twelve (12) in one day.

16 19. During the Class Period, Defendants were obligated to provide Plaintiff and
17 Plaintiff Class with a work free meal and/or rest period(s)

18 20. Plaintiff and each Class member primarily performed non-exempt work in excess
19 of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or
20 statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime
21 compensation at time and a half rate, and when applicable, double time rates as set forth by the
22 applicable Wage Orders, regulations and/or statutes.

23 21. Class members who ended their employment during the Class Period, but were
24 not paid the above due compensation for all hours worked, overtime compensation timely upon
25 the termination of their employment as required by *Labor Code* §§ 201-203, and is entitled to
26 penalties as provided by *Labor Code* § 203.

27 22. During the Class Period, the Defendants and each of them, required the
28

1 Plaintiffs and Class members to work off the clock as well as overtime without lawful
2 compensation, in violation of the various applicable Wage Orders, regulations and statutes, and
3 the Defendants: (1) Willfully failed and refused, and continue to fail and refuse to pay
4 compensation for all hours worked, lawful overtime compensation to the Plaintiff Class
5 members; and (2) willfully failed and refused, and continue to fail and refuse to pay due and
6 owing wages promptly upon termination of employment to Plaintiffs and certain Plaintiff Class
7 members.

8 23. During the Class Period, Defendants, and each of them failed and/or refused to
9 schedule Plaintiffs and Plaintiff Class in an overlapping manner so as to reasonably provide meal
10 and/or rest breaks and/or shift relief for Plaintiffs and Plaintiff Class, thereby causing members
11 of the Plaintiff Class to work without being given paid ten (10) minute rest periods for every four
12 (4) hours or major fraction thereof worked and without being given a thirty (30) minute meal
13 period for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of
14 at least ten (10) hours during which Plaintiffs Class were relieved of all duties and free to leave
15 the premises. Defendants further failed and/or refused to schedule Plaintiffs and Plaintiff Class
16 in an overlapping manner so as to reasonably ensure meal and/or rest breaks were taken within
17 the required statutory time frame as required by law. Furthermore, Defendants failed and/or
18 refused to pay any Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as
19 premium compensation for failure to provide rest and/or meal periods or to providing such rest
20 and/or meal periods within the statutory time frame as a result of their scheduling policy.

21 **V.**

22 **CLASS ALLEGATIONS**

23 24. Plaintiffs brings this action on behalf of himself and all other similarly situated
24 persons, as a class action pursuant to California Civil Code of Procedure §382 on behalf of
25 themselves and all other similarly situated persons in the Class, which is composed of and
26 defined as follows: All persons who are employed or have been employed by Defendants in the
27 State of California who, within the four years of the filing of this Complaint, have worked as
28

1 non-exempt employees and were not paid all lawful wages as regular time, overtime, and double-
2 regular time.

- 3 a. All persons who are employed or have been employed by Defendants in the
4 State of California who, for the four years prior to the filing of this class
5 action to the present have worked as non-exempt employees and have not
6 been provided a meal period for every five hours or major fraction thereof
7 worked per day, and were not provided one hour's pay for each day on which
8 such meal period was not provided;
- 9 b. All persons who are employed or have been employed by Defendants in the
10 State of California who, for the four years prior to the filing of this class
11 action to the present have worked as non-exempt employees and have not
12 been provided a rest period for every four hours or major fraction thereof
13 worked per day, and were not provided compensation of one hour's pay for
14 each day on which such rest period was not provided;
- 15 c. All persons who were employed by Defendants in the State of California who,
16 for the three years prior to the filing of this class action to the present have
17 worked as non-exempt employees and have been terminated or resigned, and
18 have not been paid wages pursuant to Labor Code section 203 and are owed
19 restitution for waiting time penalties for unpaid wages;
- 20 d. All persons who are employed or have been employed by Defendants in the
21 State of California who, for the four years prior to the filing of this class
22 action to the present have worked as non-exempt employees and were not paid
23 all wages owed, including but not limited to overtime;
- 24 e. All persons who are employed or have been employed by Defendants in the
25 State of California who, for the four years prior to the filing of this class
26 action to the present have worked as non-exempt employees and were not
27 provided an accurate payroll record as required under Labor Code 226 and
28 Labor Code Section §1174.
- f. All persons who are employed or have been employed by Defendants in the
State of California who, for the four years prior to the filing of this class
action to the present have worked as non-exempt employees who have been
subjected to unlawful and unfair business practices within the meaning of
Unfair Competition Law and who suffered injury, including lost money, as a
result of Defendants' unlawful and unfair business practices.
- g. All persons who are employed or have been employed by Defendants in the
State of California who, for the four years prior to the filing of this class
action to the present are entitled to recover from Defendants costs of
necessary business expenditures, penalties, attorneys' fees and costs.

25 25. Plaintiffs reserve the right under Rule 1855(b), *California Rules of Court*, to
26 amend or modify the Class description with greater specificity or further division into subclasses
27 or limitation to particular issues.
28

1 26. This action has been brought and may be maintained as a class action pursuant to
2 *Code of Civil Procedure* § 382 because there is a well-defined common interest of many persons
3 and it is impractical to bring them all before the court.

4 27. This Court should permit this action to be maintained as a class action pursuant
5 to *Code of Civil Procedure* § 382 because:

- 6 (a) The questions of law and fact common to the Class predominate over any
7 question affecting only individual members;
- 8 (b) A class action is superior to any other available method for the fair and
9 efficient adjudication of the claims of the members of the Class;
- 10 (c) The Class is so numerous that it is impractical to bring all member of the
11 Class before the Court;
- 12 (d) Plaintiff and the other members of the Class will not be able to
13 obtain effective and economic legal redress unless the action is maintained as a
14 class action;
- 15 (e) Plaintiff and the other members of the Class will not be able to obtain effective
16 and economic legal redress unless the action is maintained as a class action;
- 17 (f) There is a community of interest in obtaining appropriate legal and equitable
18 relief for the common law and statutory violations and other improprieties and in
19 obtaining adequate compensation for the damages and injuries which QVEST
20 actions have inflicted upon the Class;
- 21 (g) There is a community of interest in ensuring that the combined assets and
22 available insurance of the QVEST is sufficient to adequately compensate
23 members of the Class for the injuries sustained;
- 24 (h) Without class certification, the prosecution of separate actions by individual
25 members of the Class would create a risk of:
 - 26 (1) Inconsistent or varying adjudications with respect to individual members
27 of the Class which would establish incompatible standard of conduct for
28 the QVEST; and/or

1 (2) Adjudications with respect to the individual members which would, as a
2 practical matter, be dispositive of the interests of other members not
3 parties to the adjudications, or would substantially impair or impede their
4 ability to protect their interests, including but not limited to the potential
5 for exhausting the funds available from those parties who is, or may be,
6 responsible Defendants; and

7 (i) Defendants have acted or refused to act on grounds generally applicable
8 to the Class, thereby making final injunctive relief appropriate with respect to the Class as a
9 whole.

10 **VI.**

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME WAGES**

13 **(Plaintiffs and Plaintiff Class Member against all Defendants)**

14 28. Plaintiffs and Plaintiff Class incorporates paragraphs 1 through 27 of this
15 Complaint as if fully alleged herein.

16 29. Plaintiffs and Plaintiff Class members regularly worked over eight (8) hours per
17 day and forty (40) hours per week. Defendants failed to pay Plaintiff, and Plaintiff Class
18 members overtime premium for hours worked in excess of over eight (8) hours per day and forty
19 (40) hours per week for work performed for the Defendants. Defendants failed to schedule
20 Plaintiff and Plaintiff Class members in such a manner that allowed Plaintiffs and Plaintiff Class
21 members to be relieved of their shift immediately, thereby causing Plaintiffs and Plaintiff Class
22 members to work in excess of eight (8) hours per day and/or forty (40) hours per week. As such
23 Plaintiffs and Plaintiff Class seek overtime in an amount according to proof. Pursuant to *Labor*
24 *Code* § 1194, the Class members seek the payment of all overtime compensation which they
25 earned and accrued four (4) years prior to filing this complaint, according to proof.

26 30. Defendants have willfully violated the Labor Code by failing to pay Plaintiffs and
27 Plaintiff Class all wages. Plaintiffs and Plaintiff Class were denied wages as a result of
28 Defendants' policy of having Plaintiffs and Plaintiff Class work through meal and/or rest periods

1 and having Plaintiffs and Plaintiff Class work “off the clock.” Further, Defendants have
2 regularly violated the Labor Code with respect to meeting the requirements of paying wages
3 earned, including, overtime, double-time and remuneration when calculating the employees
4 regular rate of pay, as herein before alleged. Defendants have intentionally excluded
5 remuneration that must be included in all employees’ regular rate of pay in order to avoid
6 payment of overtime wages and other benefits in violation of the Labor Code and the order
7 issued by the IWC.

8 31. Additionally, Plaintiffs and Plaintiff Class members is entitled to attorneys fees,
9 costs, pursuant to California *Labor Code* § 1194 and prejudgment interest.

10 **VII.**

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

13 **(Plaintiffs and Plaintiff Class Member against all Defendants)**

14 32. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though
15 fully set forth herein, paragraphs 1 through 31 as if fully alleged herein.

16 33. *Labor Code* §§ 226.7 and 512, provides that no employer shall employ any
17 person for a work period of more than five (5) hours without providing a meal period of not less
18 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
19 without a second (2nd) meal period of not less than thirty (30) minutes.

20 34. *Labor Code* § 226.7 provides that if an employer fails to provide an employee a
21 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
22 pay at the employee's regular rate of compensation for each workday that the meal period is not
23 provided in accordance with this section.

24 35. Defendants, and each of them, failed to schedule non-exempt employees in an
25 adequately overlapping manner so as to reasonably ensure Plaintiffs and Plaintiff Class could
26 take and/or receive such meal periods within the statutory timeframe. As a result, Plaintiffs and
27 Plaintiff Class were often forced to forego meal periods and/or work during their meal periods.
28

1 In so doing, Defendants have intentionally and improperly denied meal periods to Plaintiff and
2 Plaintiff Class in violation of *Labor Code* §§ 226.7 and 512 and other regulations and statutes.

3 36. At all times relevant hereto, Plaintiffs and Plaintiff Class have worked more than
4 five (5) hours in a workday.

5 37. At varying times relevant hereto, Plaintiffs and Plaintiff Class at times have
6 worked more than ten (10) hours in a workday.

7 38. At all times relevant hereto, the QVEST, and each of them, due to their failure to
8 schedule non-exempt positions in a manner so as to reasonably provide meal and/or work free
9 meal period as required by *Labor Code* §§ 226.7 and 512.

10 39. By virtue of Defendants' failure to schedule Plaintiffs and Plaintiff Class in such
11 a way as to provide meal periods, and/or work free meal periods to Plaintiffs and Plaintiff Class
12 thereby causing Plaintiffs and Plaintiff Class to suffer, and will continue to suffer, damages in
13 the amounts which are presently unknown, but which exceed the jurisdictional limits of this
14 Court and which will be ascertained according to proof at trial.

15 40. Plaintiffs individually, and on behalf of the Plaintiff Class, requests recovery of
16 meal period compensation pursuant to *Labor Code* § 226.7 which they are owed beginning four
17 (4) years prior to filing this Complaint as well as the assessment of any statutory penalties
18 against these Defendants, and each of them, in a sum as provided by the Labor Code and/or other
19 statutes.

20 **VIII.**

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIOD OR COMPENSATION IN LIEU THEREOF**

23 **(Plaintiffs and Plaintiff Class against all Defendants)**

24 41. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though
25 fully set forth herein, paragraphs 1 through 40 as if fully alleged herein.

26 42. *Labor Code* § 226.7 provides that employers authorize and permit all employees
27 to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.
28

1 43. *Labor Code* § 226.7(b) provides that if an employer fails to provide an employee
2 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of
3 pay at the employee's regular rate of compensation for each workday that the rest period is not
4 provided.

5 44. Defendants, and each of them, failed and or refused to implement a relief system
6 by which Plaintiffs and Plaintiff Class could receive rest periods and/or work free rest periods.
7 Furthermore, due to Defendants' relief system, Plaintiffs and Plaintiff Class did not receive their
8 rest periods within the required statutory time frame. By and through their actions, Defendants
9 intentionally and improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of
10 *Labor Code* §§ 226.7 and 512.

11 45. At all times relevant hereto, Plaintiffs and Plaintiff Class, have worked more than
12 four (4) hours in a workday.

13 46. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiffs
14 and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiffs and Plaintiff
15 Class have suffered, and will continue to suffer, damages, in amounts which are presently
16 unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained
17 according to proof at trial.

18 47. Plaintiffs, themselves and on behalf of employees similarly situated, request
19 recovery of rest period compensation pursuant to *Labor Code* § 226.7, which they are owed
20 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
21 penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or
22 any other statute.

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IX.

FOURTH CAUSE OF ACTION

FAILURE TO KEEP ACCURATE PAYROLL RECORDS

(Plaintiffs and Plaintiff Class against all Defendants)

48. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 47 as if fully alleged herein.

49. *Labor Code* §1174 (d), requires an employer to keep at a central location in California or at the plant or establishment at which the employees are employed, payroll records showing the hours worked daily, and the wages paid to, each employee. Plaintiffs are informed, and believes that Defendants willfully failed to make or keep accurate records for Plaintiffs and Plaintiff Class.

50. *Labor Code* §226(a) states that, “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash,, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (4) all deductions..., (5) net wages, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee...”

51. IWC Wage Order No.1-2001, paragraph 7(a) requires that every employer shall keep accurate information with respect to each employee, including time records showing when each employee begins and ends each work periods, the total daily hours worked by each employee and the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs are informed, and believes that Defendants willfully and intentionally failed to make and/or keep records which accurately reflect the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiffs believes that Defendants’ records do not accurately reflect where

1 Plaintiffs and Plaintiff Class worked during their meal and/or rest breaks due to Defendants'
2 failure to schedule Plaintiffs and Plaintiff Class in an overlapping manner so as to provide them
3 with a meal and/or rest period.

4 52. Plaintiffs are informed, and believes that Defendants' failure to keep accurate
5 payroll records, as described above, violated *Labor Code* § 1174(d) and the applicable wage
6 order. Plaintiffs and the Plaintiff Class are entitled to penalties of \$100.00 and for the initial
7 violation and \$200.00 for each subsequent violation for every pay period during which these
8 records and information was not kept by Defendants.

9 53. An employee suffering injury as a result of a knowing and intentional failure by
10 an employer to comply with subdivision (a) is entitled to recover the greater of all actual
11 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
12 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed
13 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
14 reasonable attorney's fees.

15 54. Plaintiffs is informed and believe that Defendants' failure to keep and maintain
16 accurate records and information, as described above, were willful, and Plaintiff and Plaintiff
17 Class are entitled to a statutory penalty of \$500.00 for Plaintiff and each member of Plaintiff
18 Class pursuant to Labor Code § 1174.5.

19 **X.**

20 **FIFTH CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

22 **(Plaintiffs and Plaintiff Class against all Defendants)**

23 55. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though
24 fully set forth herein, paragraphs 1 through 54 as if fully alleged herein.

25 56. Plaintiffs and certain members of the Plaintiff Class who ended their employment
26 with QVEST during the Class Period, were entitled to be promptly paid lawful overtime
27 compensation and other premiums, as required by *Labor Code* §§ 201-203. QVEST refused
28 and/or failed to promptly compensate Plaintiffs and Plaintiff Class wages owed as a result of

1 their failure to provide meal and/or rest periods as well as pay overtime compensation. Pursuant
2 to *Labor Code* § 203, such Plaintiffs and Plaintiff Class seek the payment of penalties pursuant
3 to *Labor Code* § 203, according to proof.

4 **XI.**

5 **SIXTH CAUSE OF ACTION**

6 **UNFAIR COMPETITION LAW**

7 **(Plaintiffs and Plaintiff Class against all Defendants)**

8 57. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though
9 fully set forth herein, paragraphs 1 through 56 of this Complaint.

10 58. *California Business and Professions Code* § 17200 et. seq. (also referred to
11 herein as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair
12 competition in the form of any unlawful, unfair or fraudulent business act or practice.

13 59. *California Business and Professions Code* § 17204 allows "any person who has
14 suffered injury in fact and has lost money or property as a result of such unfair competition" to
15 prosecute a civil action for violation of the Unfair Competition Law ("UCL").

16 60. *Labor Code* § 90.5(a) states that it is the public policy of California to vigorously
17 enforce minimum labor standards in order to ensure employees are not required to work under
18 substandard and unlawful conditions, and to protect employers who comply with the law from
19 those who attempt to gain competitive advantage at the expense of their workers by failing to
20 comply with minimum labor standards.

21 61. Beginning at an exact date unknown to Plaintiffs, but at least four years prior to
22 the filing of this lawsuit, Defendants have committed acts of unfair competition as defined by the
23 Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business
24 practices and acts described in this Complaint including but not limited to violations of *Labor*
25 *Code* §§ 204, 1197, 1198 of the 226.7 and 512 as well as other statutes.

26 62. The violations of these laws and regulations, as well as of the fundamental
27 California public policies protecting workers, serve as unlawful predicate acts and practices for
28 purposes of *Business and Professions Code* § 17200 et. seq.

1 63. The acts and practices described above constitute unfair, unlawful and fraudulent
2 Business Practices, and unfair competition, within the meaning of *Business and Professions*
3 *Code* § 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
4 similarly situated employees to labor for many hours without receiving the meal and rest periods
5 and overtime compensation, to which they are entitled by law, while enabling Defendants to gain
6 an unfair competitive advantage over law-abiding employers and competitors.

7 64. As a result of Defendants acts, Plaintiffs and Plaintiff Class have suffered injury
8 in fact in being denied their statutorily entitled meal and rest periods and full compensation for
9 hours of labor. As a result of Defendants unlawful acts of unfair competition, Plaintiff and
10 Plaintiff Class have lost money and property in the form of a loss of wages in an amount to be
11 proven at trial.

12 65. As a direct and proximate result of the aforementioned acts and practices,
13 Plaintiff and Plaintiff Class have suffered lost wages in an amount to be proven at trial.

14 66. *Business and Professions Code* § 17203 provides that a court may make such
15 orders or judgments as may be necessary to prevent the use or employment by any person of any
16 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
17 prevent QVEST from repeating their unlawful, unfair and fraudulent business acts and business
18 practices alleged above.

19 67. *Business and Professions Code* § 17203 provides that the Court may restore to
20 any person in interest any money or property that may have been acquired by means of such
21 unfair competition. Plaintiff and Plaintiff Class are entitled to restitution pursuant to *Business*
22 *and Professions Code* § 17203 for all wages and payments unlawfully withheld from employees,
23 including the fair value of the meal and rest periods taken away from them, during the four-year
24 period prior to the filing of this Complaint.

25 68. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369
26 of the *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture,
27 or penal law in a case of unfair competition." Plaintiff and Plaintiff Class are entitled to enforce
28

1 all applicable penalty provisions of the *Labor Code* pursuant to *Business and Professions Code* §
2 17202.

3 69. Plaintiffs' success in this action will enforce important rights affecting public
4 interest, and in that regard Plaintiff sues on behalf of the general public, as well as himself and
5 other similarly situated employees. Plaintiffs and Plaintiff Class seek and are entitled to
6 restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies
7 owing them.

8 70. Plaintiffs herein take upon themselves enforcement of these laws and lawful
9 claims. There is a financial burden involved in pursuing this action, the action is seeking to
10 vindicate a public right, and it would be against the interests of justice to penalize Plaintiffs by
11 forcing them to pay attorney's fees from the recovery in this action. Attorney's fees are
12 appropriate pursuant to *Code of Civil Procedure* § 1021.5 and otherwise.

13 **XII.**

14 **SEVENTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE FOR NECESSARY EXPENDITURES (LABOR CODE**
16 **SECTIONS 2802)**
(Plaintiffs and Plaintiff Class against All Defendants)

17 71. Plaintiffs re-allege and incorporate by reference, as though fully set forth herein,
18 paragraphs 1 through 77 of this Complaint.

19 72. Cal. Labor Code §2802, states "An employer shall indemnify his or her employee
20 for all necessary expenditures or losses incurred by the employee in direct consequence of the
21 discharge of his or her duties...."

22 73. Plaintiffs and the Plaintiff Class were not reimbursed by Defendants for necessary
23 expenditures as a direct consequence of the discharge of their duties.

24 74. Defendants knowingly, willingly and intentionally attempted to offset the cost of
25 doing business on the Plaintiff and Plaintiff Class.

26 75. Defendants had a corporate practice and policy of requiring Plaintiffs and Plaintiff
27 Class to shoulder the burden of Defendants' cost of doing business by failing to reimburse
28 Plaintiffs and Plaintiff Class for necessary expenditures, specifically purchasing items such as

1 uniforms and boots.

2 76. Accordingly, Plaintiffs and Plaintiff Class is entitled to an award of "necessary
3 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's
4 fees and interest.

5 **XIII.**

6 **PRAYER FOR RELIEF**

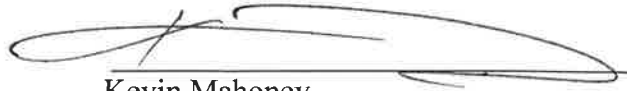
7 WHEREFORE, Plaintiff and Plaintiff Class pray for judgment as follows:

- 8 1. For nominal damages;
- 9 2. For compensatory damages;
- 10 3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits
11 from the unlawful business practices of Defendants;
- 12 4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated
13 or resigned employees;
- 14 5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 226.7, 512 and 1194;
- 15 6. For interest accrued to date;
- 16 7. Injunctive relief, enjoining Defendants from engaging in the unlawful and unfair
17 business practices complained herein;
- 18 8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair
19 business practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and
20 declaring Defendants have unlawfully treated Plaintiff and Plaintiff Class, failed to
21 pay all wages and overtime compensation in violation of California law, failed to pay
22 wages to former employees Plaintiff and other certain members of Plaintiff Class,
23 failed to provide Plaintiff and Plaintiff Class accurate itemized wage statements upon
24 payment of wages, and declaring the amounts of damages, penalties, equitable relief,
25 costs, and attorney's fees Plaintiff and Plaintiff Class are entitled to.
- 26 9. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and
27 1194;
- 28 10. For reasonable attorneys' fees pursuant to *Labor Code* §§ 226 and 1194 and;

1 11. For all such other and further relief as the Court may deem just and proper.
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3

4 Dated: December 30, 2014

MAHONEY LAW GROUP, APC

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8 Kevin Mahoney
9 Attorneys for Plaintiff JESUS BIBRIESCA AND
JOSE MOLINA
and on behalf of all employees similarly situated
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