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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF LOS ANGELES
21 CENTRAL DISTRICT

22 Audon Espinosa, individually and on
23 behalf of all others similarly situated,

24 Plaintiff,

25 v.

26 Wilmington Recyclers, LLC, AEG
27 Processing Center No. 58, Inc., Charles
28 Moine, and Doe One through and
including Doe One Hundred,

Defendants.

) Case No. BC513931

) Unlimited Civil Case Over \$25,000

) ~~PROPOSED~~ THIRD AMENDED
) COMPLAINT
) [CLASS ACTION]

) Hon. Maren Nelson
) Dept. 307

) 1. Cal. Lab. Code §§ 510, 1194—Recovery
) of Unpaid Minimum Wage and Overtime

) 2. Fair Labor Standards Act, 29 U.S.C.
) §§ 206, 207— Recovery of Unpaid
) Minimum Wage and Overtime

) 3. Cal Lab. Code §§ 226.7, 512—Meal and
) Rest Period Violations

) 4. Cal. Lab. Code §§ 201, 202 and 203—
) Timely Payment of Final Wages

) 5. Cal. Bus. & Prof. Code § 17200 *et*
) *seq.*—Disgorgement of Profits

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 05 2018

Sherri R. Carter, Executive Officer/Clerk
By: Benigno Del Barrio, Deputy

1) DEMAND FOR JURY TRIAL

2)
3) Complaint Filed: July 2, 2013
Trial Date: None

4 COMES NOW Plaintiff, and for his causes of action against Defendants, alleges:

5 **PARTIES AND JURISDICTION**

6 1. Plaintiff Fermin Chico ("Plaintiff" or "Chico") is an individual who, during the time
7 periods relevant to this Complaint, was employed by Defendants.

8 2. This Complaint asserts claims against five Defendants: (1) Wilmington Recyclers, LLC;
9 (2) Charles Moine; (3) Kathleen Moine; (4) Wilmington Recyclers, a general partnership; and (5) Moine
10 Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers.²

11 3. Defendant Wilmington Recyclers, LLC ("WRL") was and is doing business within Los
12 Angeles County. WRL is an aluminum recycling company.

13 4. Defendant Charles Moine was and is doing business within Los Angeles County. Charles
14 Moine is sued individually, is sued on behalf of the partnership, Wilmington Recyclers, a general
15 partnership, and is sued on behalf of the partnership, Moine Bros. a Partnership Consisting of Charles A.
16 Moine DBA Wilmington Recyclers.

17 5. Defendant Kathleen Moine was and is doing business within Los Angeles County.
18 Kathleen Moine is sued individually, is sued on behalf of the partnership, Wilmington Recyclers, a
19 general partnership, and is sued on behalf of the partnership, Moine Bros. a Partnership Consisting of
20 Charles A. Moine DBA Wilmington Recyclers.

21 6. Defendant Wilmington Recyclers, a general partnership ("WRGP"), was and is doing
22 business within Los Angeles County.

23 7. Defendant Moine Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington
24 Recyclers ("MBP"), was and is doing business within Los Angeles County.

25 8. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
26 Does One through One Hundred, but Plaintiff will seek leave to amend this Complaint to allege their
27

28 ² Defendant AEG Processing Center No. 58, Inc. has been dismissed.

1 true names and capacities once they are ascertained. Upon information and belief, Plaintiff makes all
2 allegations contained in this Complaint against all of the Defendants, including Doe One through One
3 Hundred.

4 **FACTUAL BACKGROUND**

5 9. This Complaint asserts claims against WRL, Charles Moine, Kathleen Moine, WRGP,
6 and MBP for violations of California Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194 and
7 1198 of the California Labor Code, violations of 8 California Code of Regulations section 11010,
8 violations of Industrial Welfare Commission (the "Commission") wage order No. 1-2001 or the
9 applicable wage order, and violations of section 17200 *et seq.* of the California Business and Professions
10 Code. This Complaint also asserts claims against WRL, Charles Moine, Kathleen Moine, WRGP, and
11 MBP for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206, 207.

12 10. Defendants employed non-exempt workers in California.

13 11. Employees are subject to identical or nearly identical policies and procedures related to
14 employee compensation.

15 12. Employees are classified as non-exempt by Defendants and entitled to receive overtime
16 pay. Employees are paid an hourly wage.

17 13. Chico worked in excess of eight hours per day and 40 hours per week without payment of
18 proper overtime compensation as required by California state wage and hour laws.

19 14. At all relevant times mentioned herein, section 510(a) of the California Labor Code
20 provided, in part:

21 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
22 workday and any work in excess of 40 hours in any one workweek and the first eight
23 hours worked on the seventh day of work in any one workweek shall be compensated at
24 the rate of no less than one and one-half times the regular rate of pay for an employee.
25 Any work in excess of 12 hours in one day shall be compensated at the rate of no less
26 than twice the regular rate of pay for an employee. In addition, any work in excess of
27 eight hours on any seventh day of a workweek shall be compensated at the rate of no less
28 than twice the regular rate of pay of an employee. Nothing in this section requires an
employer to combine more than one rate of overtime compensation in order to calculate
the amount to be paid to an employee for any hour of overtime work.

Cal. Lab. Code § 510(a).

1 15. Section 1194 of the California Labor Code provided:

2 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
3 than the legal minimum wage or the legal overtime compensation applicable to the
4 employee is entitled to recover in a civil action the unpaid balance of the full amount of
5 this minimum wage or overtime compensation, including interest thereon, reasonable
6 attorney's fees, and costs of suit.

7 Cal. Lab. Code § 1194(a).

8 16. Defendant's failure to timely pay Plaintiff and other employees after discharge was in
9 violation of California Labor Code sections 510 and 1194.

10 17. Chico worked in excess of 40 hours per week without payment of proper overtime
11 compensation as required by the FLSA, 29 U.S.C. § 207.

12 18. Defendants' employees are similarly situated in that Defendants failed to provide them
13 with all required meal and rest periods, and failed to timely furnish them with a final paycheck
14 encompassing all unpaid earned wages following separation of employment.

15 19. The right to meal and rest periods has been codified in sections 226.7 and 512 of the
16 California Labor Code. At all relevant times mentioned herein, section 226.7 provided:

17 (a) No employer shall require any employee to work during any meal or rest period
18 mandated by an applicable order of the Industrial Welfare Commission.

19 (b) If an employer fails to provide an employee a meal period or rest period in
20 accordance with an applicable order of the Industrial Welfare Commission, the employer
21 shall pay the employee one additional hour of pay at the employee's regular rate of
22 compensation for each work day that the meal or rest period is not provided.

23 Cal. Lab. Code § 226.7.

24 20. Employers are required to schedule meal periods before the end of the fifth hour of work.
25 At all times relevant herein, the Commission wage order No. 9-2001, codified as section 11010 of 8
26 California Code of Regulations, provided, in relevant part:

27 12. Meal Periods

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

...

(C) Unless the employee is relieved of all duty during a 30 minute meal period,
the meal period shall be considered an "on duty" meal period and counted as time
worked. An "on duty" meal period shall be permitted only when the nature of the work

1 prevents an employee from being relieved of all duty and when by written agreement
2 between the parties an on-the-job paid meal period is agreed to. The written agreement
shall state that the employee may, in writing, revoke the agreement at any time.

3 (D) If an employer fails to provide an employee a meal period in accordance with
4 the applicable provisions of this order, the employer shall pay the employee one (1) hour
of pay at the employee's regular rate of compensation for each workday that the meal
period is not provided.

5 (E) In all places of employment where employees are required to eat on the
6 premises, a suitable place for that purpose shall be designated.

7 13. Rest Periods

8 (A) Every employer shall authorize and permit all employees to take rest periods,
9 which insofar as practicable shall be in the middle of each work period. The authorized
10 rest period time shall be based on the total hours worked daily at the rate of ten (10)
minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
need not be authorized for employees whose total daily work time is less than three and
one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for
which there shall be no deduction from wages.

11 (B) If an employer fails to provide an employee a rest period in accordance with
12 the applicable provisions of this order, the employer shall pay the employee one (1) hour
of pay at the employee's regular rate of compensation for each workday that the rest
13 period is not provided.

14 8 Cal. Code Regs. § 11010.

15 21. On several occasions, Defendants' employees were not provided with meal periods
16 before the end of the fifth hour of work.

17 22. Chico and other employees were not provided with meal and rest periods where they
18 were relieved of all duties. Defendants' employees were not provided with proper meal periods because
19 they were required to remain at the workplace and standby for duty.

20 23. Defendants' employees were not provided with an additional hour of pay for each
21 workday that the meal period was not properly provided. Defendants' employees were either precluded
22 from enjoying their meal period before the end of their fifth hour of work or were denied a meal period
23 at any time during their shift.

24 24. Chico and other employees were not provided with an additional hour of pay for each
25 workday that the rest period was not properly provided.

26 25. Defendants' failure to pay employees for missed meal and rest periods systematically
27 violated the mandatory requirements of sections 226.7 and 512 of the California Labor Code and
28 Industrial Welfare Commission wage order No. 1-2001 or the applicable wage order, codified as section

1 11010 of 8 California Code of Regulations. As a result, employees were routinely denied proper
2 compensation for missed meal and rest periods.

3 26. The practices of WRL, Charles Moine, Kathleen Moine, WRGP, and MBP violate
4 section 1198 of the California Labor Code which provided:

5 The maximum hours of work and the standard conditions of labor fixed by the
6 commission shall be the maximum hours of work and the standard conditions of labor for
7 employees. The employment of any employee for longer hours than those fixed by the
order or under conditions of labor prohibited by the order is unlawful.

8 Cal. Lab. Code § 1198.

9 27. In light of Defendants' failure to pay wage premiums for missed meal and rest periods,
10 Defendants willfully failed to pay wages promptly upon employees' termination or resignation.

11 28. California Labor Code sections 201 and 202 provided that employees must receive wages
12 earned and unpaid promptly upon termination or resignation. At all relevant times mentioned herein, the
13 relevant portion of section 201(a) of the California Labor Code provided: "If an employer discharges an
14 employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal.
15 Lab. Code § 201(a).

16 29. At all relevant times mentioned herein, the relevant portion of section 202(a) of the
17 California Labor Code provided: "If an employee not having a written contract for a definite period quits
18 his or her employment, his or her wages shall become due and payable not later than 72 hours
19 thereafter." Cal. Lab. Code § 202(a).

20 30. At all relevant times mentioned herein, section 203 of the California Labor
21 Code provided:

22 If an employer willfully fails to pay, without abatement or reduction, in accordance with
23 Sections 201, 201.5, 202 and 202.5, any wages of an employee who is discharged or who
24 quits, the wages of the employee shall continue as a penalty from the due date thereof at
25 the same rate until paid or until action therefore is commenced; but the wages shall not
continue for more than 30 days.

26 Cal. Lab. Code § 203.

27 31. Because Defendants' employees who were separated from their employment did not
28 receive wage premiums for missed meal and rest periods and did not receive all their final wages at the

1 time required by California Labor Code sections 201-202, employees are entitled to continuing wages
2 under Labor Code section 203.29. Defendants' conduct of willfully failing to pay wages earned and
3 unpaid promptly upon employees' termination or resignation violates the California Labor Code and
4 also constitutes unfair competition and unlawful, unfair, and fraudulent acts and practices within the
5 meaning of section 17200 *et seq.* of the California Business and Professions Code.

6 32. Defendants' timekeeping system records should readily be available on a class-wide
7 basis.

8 33. Defendants engaged in systematic and uniform timekeeping practices with respect to
9 their employees that were unlawful, unfair and deceptive to them.

10 34. The net effect of Defendants' policy and practice, instituted and approved by company
11 managers, is that it willfully fails to pay wage premiums on account of missed meal and rest periods, and
12 fails to timely pay minimum wages and overtime to save payroll costs. Defendants enjoy ill-gained
13 profits at the expense of their employees.

14 CLASS-ACTION ALLEGATIONS

15 35. Plaintiff brings this action individually and as a class action pursuant to California Code
16 of Civil Procedure section 382.

17 36. The Class members and subclasses are defined as follows:

18 Class: All persons employed by Wilmington Recyclers, LLC, Charles Moine, Kathleen
19 Moine, Wilmington Recyclers, a general partnership in California, and/or Moine Bros. a
20 Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers, who were paid
21 on an hourly basis, during the period from four years before the filing of the Complaint
22 through the date of the filing of a motion for class certification in this case.

23 Time-Shaving Subclass: All Class members who were employed during the period July 2,
24 2009 through December 29, 2013.

25 Daily Overtime Subclass: All Class members who worked in excess of eight hours per
26 day, during workweeks in which they worked less than 40 hours.

27 Late Meal Period Subclass: All Class members whose time records show a first meal
28 period commencing after the end of the fifth hour of work on a workday that was more
than six hours.

37. Plaintiff reserves the right to modify the Class definition after further discovery.

38. Plaintiff contends Defendants, as to each Class member, failed to pay overtime

1 compensation to those who worked in excess of 40 hours per week and/or eight hours a day.

2 39. Plaintiff contends Defendants, as to each Class member, failed to provide meal and rest
3 periods, as required by sections 226.7 and 512 of the California Labor Code and California Code of
4 Regulations, Title 8, section 11010, and that Defendants' failure to provide the legally mandated meal
5 and rest periods entitles them to one additional hour of pay for each workday he or she was not provided
6 the proper meal period and one additional hour of pay for each workday he or she was not provided the
7 proper rest period.

8 40. Plaintiff contends that Defendants' failure to make wage payments within the time
9 provided by sections 201 and/or 202 of the California Labor Code has been and is "willful" within the
10 meaning of section 203 of the California Labor Code and that, accordingly, each Class member who
11 separated from his/her employment is entitled to the continuing wages provided for by section 203.

12 41. Numerosity. The number of class members is great, believed to be in excess of 50
13 current and former employees. It therefore is impractical to join each class member as a named plaintiff.
14 Accordingly, utilization of a class action is the most economically feasible means of determining the
15 merits of this litigation.

16 42. Ascertainability. Despite the size of the proposed classes, the class members are readily
17 ascertainable through an examination of the records that Defendants are required by law to keep.
18 Likewise, the dollar amount owed to each class member is readily ascertainable by an examination of
19 those same records.

20 43. Commonality. Common questions of fact and of law predominate in the class member's
21 claims over individual issues regarding the money owed to each class member. The questions include,
22 but are not limited to, the following:

23 a. Whether WRL, Charles Moine, Kathleen Moine, WRGP, and MBP violated
24 Wage Order No. 1-2001 (or the applicable wage order) and Labor Code section 510 by failing to
25 pay overtime compensation to employees who worked in excess of 40 hours per week and/or
26 eight hours a day.

27 b. Whether the policies and practices of WRL, Charles Moine, Kathleen Moine,
28 WRGP, and MBP described in this Complaint were and are illegal.

1 c. Whether WRL, Charles Moine, Kathleen Moine, WRGP, and MBP failed to
2 provide legally mandated meal and rest periods to their employees.

3 d. Whether WRL, Charles Moine, Kathleen Moine, WRGP, and MBP failed to pay
4 one additional hour of pay at the employees' regular rate of pay for each workday that the meal
5 period was not provided and one additional hour of pay at the employees' regular rate of pay for
6 each workday that the rest period was not provided.

7 e. Whether WRL, Charles Moine, Kathleen Moine, WRGP, and MBP failed to pay
8 minimum wages to their employees in violation of section 1194 of the California Labor Code.

9 f. Whether WRL, Charles Moine, Kathleen Moine, WRGP, and MBP failed to pay
10 all wages in a timely fashion upon each and every employee's discharge or resignation of
11 employment, in violation of sections 201 and/or 202 of the California Labor Code.

12 g. Whether the conduct of WRL, Charles Moine, Kathleen Moine, WRGP, and MBP
13 constitutes unlawful, unfair, or fraudulent business practices.

14 h. Whether the conduct of WRL, Charles Moine, Kathleen Moine, WRGP, and MBP
15 constitutes unfair competition.

16 i. Whether their employees are entitled to restitution as a result of the conduct of
17 WRL, Charles Moine, Kathleen Moine, WRGP, and MBP in not providing employees with all
18 wages earned and unpaid promptly upon termination or resignation.

19 j. Whether the misconduct of WRL, Charles Moine, Kathleen Moine, WRGP, and
20 MBP as alleged herein was intentional.

21 44. Community of Interest. There is a well-defined community of interest in the questions of
22 law and fact common to the class members.

23 45. Typicality. Plaintiff's claims are typical of the claims of the Class members, whose
24 claims all arise from the same general operative facts, namely, WRL, Charles Moine, Kathleen Moine,
25 WRGP, and MBP did not compensate their employees as required by sections 201, 202, 203, 226.7, 510,
26 512, 1194 and 1198 of the California Labor Code, 8 California Code of Regulations section 11010, and
27 Commission wage order No. 1-2001 or the applicable wage order. The Plaintiff has no conflict of
28 interest with the other Class members and is able to represent the Class members' interests fairly and

1 adequately.

2 46. Superiority. A class action is a superior method for the fair and efficient adjudication of
3 this controversy. The persons within the Class are so numerous that joinder of all of them is
4 impracticable. The disposition of all claims of the members of the Class in a class action, rather than in
5 individual actions, benefits the parties and the Court. The interest of the Class members in controlling
6 the prosecution of separate claims against WRL, Charles Moine, Kathleen Moine, WRGP, and MBP is
7 small when compared with the efficiency of a class action.

8 47. Adequacy of Representation. The Representative Plaintiff in this class action is an
9 adequate representative of the class, in that the Representative Plaintiff's claims are typical of those of
10 the Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class
11 members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has
12 retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not
13 subject to any individual defenses unique from those conceivably applicable to the Class as a whole.

14 48. Manageability. Although the number of class members is great, believed to be in excess
15 of 50 current and former employees, the matter is manageable as a class action and the data required to
16 establish liability and prove damages is readily available, and almost all of it is available in
17 computerized databases.

18 49. In addition to asserting class-action claims, pursuant to California Business and
19 Professions Code section 17200 *et seq.*, Plaintiff asserts a claim on behalf of the general public. Plaintiff
20 seeks to require WRL, Charles Moine, Kathleen Moine, WRGP, and MBP to pay restitution of all
21 monies wrongfully obtained by them through their unfair, unlawful, and/or deceptive business practices.
22 A representative action is necessary and appropriate because WRL, Charles Moine, Kathleen Moine,
23 WRGP, and MBP have engaged in the wrongful acts described herein as a general business practice.

24 FLSA COLLECTIVE ACTION ALLEGATIONS

25 50. Plaintiff brings this action individually and as a collective action. The collective action is
26 defined as follows:

27 **Collective Action:** All persons employed by Wilmington Recyclers, LLC, Charles
28 Moine, Kathleen Moine, Wilmington Recyclers, a general partnership in California,
and/or Moine Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington

1 Recyclers, in California who were paid on an hourly basis during the period from three
2 years before the filing of the Complaint through the date of the filing of a motion for
certification of a collective action in this case.

3 51. Plaintiff and the Collective Action Members are similarly situated in that (a) Plaintiff and
4 the Collective Action Members were employees of Defendants; and (b) Defendants knowingly and
5 willfully violated provisions of the FLSA by not timely paying Plaintiff and the Collective Action
6 Members their minimum wages and overtime after discharge.

7 52. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C. § 216 as
8 to claims for liquidated damages, costs, and attorney’s fees.

9 53. All individuals employed by Defendants should be given notice and should be allowed to
10 give their consent in writing, in other words, to “opt in,” to the collective action pursuant to 29 U.S.C. §
11 216.

12 **FIRST CAUSE OF ACTION**

13 (Cal. Lab. Code §§ 510, 1194, Failure to Pay Minimum Wage and Overtime—Against Wilmington
14 Recyclers, LLC, Charles Moine, Kathleen Moine, Wilmington Recyclers, a general partnership in
15 California, and Moine Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers)

16 54. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
17 forth in this Complaint.

18 55. Failure of an employer to pay its employees the legal minimum wage and/or the legal
19 overtime compensation applicable to the employee violates, *inter alia*, sections 510 and 1194 of the
20 California Labor Code.

21 56. During the relevant time period, WRL, Charles Moine, Kathleen Moine, WRGP, and
22 MBP failed to timely pay Plaintiff and Class members their minimum wages and overtime compensation
23 due and owing to them, and thereby violated sections 510 and 1194 of the California Labor Code.

24 57. Accordingly, Plaintiff and Class members are entitled to recover their liquidated damages
25 under section 1194.2 of the California Labor Code, and Plaintiff is entitled to costs and attorney’s fees
26 as provided for in section 1194 of the California Labor Code.

27 **SECOND CAUSE OF ACTION**

28 (FLSA, 29 U.S.C. §§ 206, 207, Minimum Wage and Overtime)

1 (On Behalf of Plaintiff and Collective Action Members—Against Wilmington Recyclers, LLC, Charles
2 Moine, Kathleen Moine, Wilmington Recyclers, a general partnership in California, and Moine Bros. a
3 Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers)

4 58. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
5 forth in this Complaint.

6 59. Pursuant to 29 U.S.C. § 206, individuals are required to be paid minimum wages for
7 work.

8 60. Pursuant to 29 U.S.C. § 207, individuals are required to be paid overtime for work in
9 excess of forty hours per week.

10 61. Plaintiff and Collective Action Members were not timely paid the minimum wages and
11 overtime wages to which they were entitled after discharge.

12 62. Accordingly, pursuant to 29 U.S.C. § 216, Plaintiff and Collective Action Members are
13 entitled to liquidated damages in an amount according to proof, attorney's fees, and costs of suit.

14 **THIRD CAUSE OF ACTION**

15 (Cal. Lab. Code §§ 226.7, 512, Failure to Provide Meal and Rest Periods—Against Wilmington
16 Recyclers, LLC, Charles Moine, Kathleen Moine, Wilmington Recyclers, a general partnership in
17 California, and Moine Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers)

18 63. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
19 forth in this Complaint.

20 64. Plaintiff and Class members were not provided time to take all required meal and rest
21 periods during their work shifts.

22 65. Accordingly, Plaintiff and Class members are entitled to compensation of at least one
23 hour of pay for each workday during which they were not provided the proper meal period and one hour
24 of pay for each workday during which they were not provided the proper rest period.

25 **FOURTH CAUSE OF ACTION**

26 (Cal. Lab. Code §§ 201, 202, 203, Failure to Pay Final Wages Timely—Against Wilmington Recyclers,
27 LLC, Charles Moine, Kathleen Moine, Wilmington Recyclers, a general partnership in California, and
28 Moine Bros. a Partnership Consisting of Charles A. Moine DBA Wilmington Recyclers)

1 in violation of California Labor Code sections 201 and 202.

2 73. The violation of WRL, Charles Moine, Kathleen Moine, WRGP, and MBP of the
3 applicable wage order is in contravention of state law and, consequently, constitutes an unlawful
4 business act or practice within the meaning of Business and Professions Code section 17200 *et seq.*

5 74. Labor Code section 90.5(a) articulates the public policy of this State to enforce minimum
6 labor standards vigorously.

7 75. Through the wrongful and illegal conduct alleged herein, WRL, Charles Moine, Kathleen
8 Moine, WRGP, and MBP have acted contrary to the public policy of this State.

9 76. As a result of the violations of the UCL, WRL, Charles Moine, Kathleen Moine, WRGP,
10 and MBP have unjustly enriched themselves at the expense of their employees.

11 77. To prevent this unjust enrichment, WRL, Charles Moine, Kathleen Moine, WRGP, and
12 MBP should be required to make restitution to their employees, as identified in this Complaint (and as
13 will be identified through discovery into Defendants' books and records).

14 78. Plaintiff requests that the Court enter such orders or judgments as may be necessary to
15 restore to any person in interest any money that may have been acquired by means of such unfair
16 practices, as provided in section 17203 of the California Business and Professions Code.

17 79. Plaintiff is a "person" within the meaning of section 17204 of the California Business and
18 Professions Code, and has standing to bring this cause of action.

19 80. Pursuant to section 17203 of the California Code of Civil Procedure, Plaintiff requests
20 restitution of all sums obtained by Defendants in violation of section 17200 *et seq.* of the California
21 Business and Professions Code for the period of time from the four years preceding the filing of the
22 Complaint.

23 81. The named Plaintiff is a person who has suffered damage as a result of the unlawful
24 actions of Defendants herein alleged. The actions of Defendants herein alleged are in violation of
25 statute, the applicable wage order and in contravention of established public policy, and, accordingly, a
26 court order compelling them to make restitution is a vindication of an important public right. The extent
27 to which Defendants have been unjustly enriched as a result of their unlawful and unfair business
28 practices is a matter that can be ascertained by examination of the payroll and accounting records that

1 Defendants are required by law to keep and maintain and that Defendants have kept and maintained.

2 82. The conduct of Defendants, as alleged herein, has been deleterious to Plaintiff.
3 Plaintiff's efforts in securing the requested relief will result "in the enforcement of an important right
4 affecting the public interest." Cal. Civ. Proc. Code § 1021.5. Moreover, because "the necessity and
5 financial burden of private enforcement . . . are such as to make [an attorney's fee] award appropriate,
6 and [because attorney's] fees should not in the interest of justice be paid out of the recovery, if any,"
7 Cal. Civ. Proc. Code § 1021.5, Plaintiff requests that the Court also award reasonable attorney's fees
8 pursuant to the provisions of section 1021.5 of the California Code of Civil Procedure.

9 83. Pursuant to section 17205, the remedies and penalties provided by section 17200 *et seq.*
10 are cumulative to the remedies and penalties available under all other laws of this state.

11 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

12 1. That, with respect to the First Cause of Action, it be adjudged that the failure of WRL,
13 Charles Moine, Kathleen Moine, WRGP, and MBP to timely provide Plaintiff and Class members their
14 overtime wages and/or minimum wages entitles them to liquidated damages in an amount according to
15 proof, interest thereon, reasonable attorney's fees and cost of suit.

16 2. That, with respect to the Second Cause of Action, it be adjudged that the failure of
17 Defendants to timely provide Plaintiff and Collective Action members their unpaid minimum wages and
18 overtime entitles Plaintiff and Collective Action members damages in an amount according to proof,
19 interest thereon, reasonable attorney's fees and cost of suit.

20 3. That, with respect to the Third Cause of Action, it be adjudged that the failure of WRL,
21 Charles Moine, Kathleen Moine, WRGP, and MBP to provide Plaintiff and Class members proper meal
22 and rest periods entitles them to one additional hour of pay for each day a meal period was missed, and
23 one additional hour of pay for each day a rest period was missed, in an amount according to proof.

24 4. That, with respect to the Fourth Cause of Action, it be adjudged that the failure of WRL,
25 Charles Moine, Kathleen Moine, WRGP, and MBP to make payment of wages within the time
26 prescribed by sections 201 and/or 202 of the California Labor Code was "willful" within the meaning of
27 section 203 of the California Labor Code and that this Court award Plaintiff and Class members
28 continuing wages in an amount according to proof.

1 5. That, under the Fifth Cause of Action, it be adjudged that Defendants' violations of
2 sections 201, 202, 203, 226.7, 510, 1194 and 1198 of the California Labor Code, violated section 17200
3 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiff requests that the Court
4 order WRL, Charles Moine, Kathleen Moine, WRGP, and MBP to pay restitution in the form of
5 minimum wages, overtime compensation, underpaid compensation for missed meal period and rest
6 periods and continuing wages unlawfully retained by WRL, Charles Moine, Kathleen Moine, WRGP,
7 and MBP, with interest. Finally, Plaintiff requests that the Court award Plaintiff his reasonable
8 attorney's fees and costs incurred in the prosecution of the Fifth Cause of Action pursuant to section
9 1021.5 of the California Code of Civil Procedure.

10 6. For such further relief as the Court may order.
11 Plaintiff requests a trial by jury as to all causes of action.

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13 Dated: December 12, 2017

LAW OFFICE OF JONATHAN RICASA

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16 _____
Jonathan Ricasa
17 Attorney for Plaintiff Fermin Chico
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PROOF OF SERVICE

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I am attorney for the plaintiff(s) herein, over the age of eighteen years, and not a party to the within action. My business address is Law Office of Jonathan Ricasa, 15760 Ventura Boulevard, Suite 700, Encino, California 91436. On January 19, 2018, I served the within documents: **THIRD AMENDED COMPLAINT.**

I caused a true and correct copy of the foregoing document(s) to be sent to the parties listed on the Electronic Service List maintained by Case Anywhere in the manner set forth in the Court’s Order authorizing electronic service dated June 9, 2014.

I am readily familiar with the Firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

N/a.

I declare under penalty of perjury that the above is true and correct. Executed on January 19, 2018, at Encino, California.



Jonathan Ricasa