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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JUL 03 2017

Sharril R. Carter, Executive Officer/Clerk  
By: M. Soto, Deputy  
Moses Soto

Attorneys for Plaintiff LEONEL MERIDA, individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

LEONEL MERIDA, individually and on  
behalf of all others similarly situated,

Case No.:

**BC 6 6 7 3 8 4**

Plaintiff,

**CLASS ACTION**

v.

**COMPLAINT FOR DAMAGES**

ALL-PRO ENTERPRISES, INC., a  
California non-profit corporation; and  
DOES 1 through 50, inclusive,

Defendant.

1. Violation of Cal. Labor Code §§ 510, 1194 (Recovery of Unpaid Minimum Wage and Overtime);
2. Violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of Cal. Labor Code §§ 226.7, 512 (Rest Period Violations);
4. Violation of Cal. Labor Code § 204 (Unpaid Wages During Employment);
5. Violation of Cal. Labor Code §§ 201-203 (Failure to Pay Wages Due at Separation of Employment);
6. Violation of Cal. Labor Code §§ 226(a)(e) (Failure to Issue Accurate Itemized Wage Statements); and
7. Violation of Cal. Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices).

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff LEONEL MERIDA, individually and on behalf of all others similarly situated,  
3 complains and alleges on information and belief as follows:

4 **INTRODUCTION**

5 1. This is a class action brought on behalf of Plaintiff and the class he seeks to  
6 represent ("Plaintiff Class" or "Class Members"). Class Members consist of all non-exempt,  
7 hourly-paid employees currently and/or formerly employed by Defendant ALL-PRO  
8 ENTERPRISES, INC. (hereinafter "All-Pro" or "Defendant"), during the Class Period. The term  
9 "Class Period" is defined as four (4) years prior to the filing of this Complaint through the date  
10 of certification. Plaintiff reserves the right to amend this Complaint to reflect a different "Class  
11 Period" as further discovery is conducted.

12 2. Plaintiff, individually and on behalf of Class Members, seeks relief against  
13 Defendant for the failure to pay all wages due, including both regular and overtime wages, and  
14 minimum wages; the failure to provide meal and rest periods or compensation in lieu thereof; the  
15 failure to pay wages due during employment; the failure to pay wages due at separation of  
16 employment; and the failure to provide accurate itemized wage statements upon payment of  
17 wages.

18 3. Plaintiff further seeks equitable remedies in the form of declaratory relief and  
19 injunctive relief, and relief under the Bus. & Prof. Code sections 17200 et seq. for unfair business  
20 practices.

21 **JURISDICTION AND VENUE**

22 4. Venue is proper in this Judicial district and the County of Los Angeles because  
23 Defendant maintains its locations, transacts business, is headquartered in this county, and  
24 obligations and liability arise in this county, making the subject of this action in the County of  
25 Los Angeles, California.

26 5. The wages, statutory penalties, monetary damages, and restitution sought by  
27 Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established  
28 according to proof at trial. This Court has jurisdiction over this action pursuant to California

1 Constitution, Article VI, section 10. The statutes under which this action is brought do not specify  
2 any other basis for jurisdiction.

3 6. The California Superior Court has jurisdiction in the matter because the individual  
4 claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold  
5 and the five million dollar (\$5,000,000) aggregate jurisdictional threshold for Federal Court and,  
6 upon information and belief, Plaintiff and Defendant are residents of and/or domiciled in the State  
7 of California. Further, there is no federal question at issue as the issues herein are based solely  
8 on California Statutes and law including the California Labor Code, Industrial Welfare  
9 Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and  
10 Professions Code.

### 11 ADMINISTRATIVE REMEDIES

12 7. Prior to filing this Complaint, on July 3, 2017, Plaintiff gave written notice by  
13 certified mail to the Labor and Workforce Development Agency (“LWDA”) and to Defendant  
14 ALL-PRO ENTERPRISES, INC., of the specific provisions alleged to have been violated,  
15 including the facts and theories to support the alleged violations as required by Cal. Labor Code  
16 § 2699.3. Please see a true and correct copy of the letter to the LWDA, dated July 3, 2015 attached  
17 hereto as Exhibit “A.” Once the statutory timeframe passes, Plaintiff intends to amend his  
18 complaint as a matter of right to include violation of Cal. Labor Code § 2699.3.

### 19 THE PARTIES

#### 20 **A. The Plaintiff**

21 8. Plaintiff, at all relevant times herein, was an employee of Defendant and entitled  
22 to compensation for all hours worked, overtime compensation, and penalties from Defendant.  
23 Plaintiff was employed by Defendant for at least four (4) years prior to the commencement of this  
24 action, working at All-Pro in the County of Los Angeles in California. Plaintiff was employed  
25 by Defendant during the Class Period in a non-exempt hourly position. Each of the Class  
26 Members consists of identifiable, current and/or former similarly situated persons who were  
27 employed in non-exempt hourly positions in California for Defendant during the Class Period.

#### 28 **B. The Defendant**

1           9.       Plaintiff is informed and believes, and based thereon alleges, that Defendant All-  
2 Pro, is a California non-profit corporation whose facilities are located in California, and has its  
3 principal place of business within Los Angeles County. Defendant All-Pro is a janitorial services  
4 company that provides complete janitorial and building maintenance throughout Los Angeles  
5 County, and/or was the employer of Plaintiff and Plaintiff Class during the Class Period. On  
6 information and belief, Plaintiff alleges that Defendant All-Pro is conducting business in good  
7 standing in California.

8           10.      Plaintiff is ignorant of the true names, capacities, relationships and extent of  
9 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,  
10 inclusive, but on information and belief alleges, that said Defendants are legally responsible for  
11 the payment of rest and meal period compensation, and wages to Plaintiff and Plaintiff Class by  
12 virtue of their unlawful practices, and therefore sues these Defendants by such fictitious names.  
13 Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants  
14 when ascertained.

15           11.      Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
16 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
17 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant  
18 are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as  
19 the employer and/or joint employer of Plaintiff and Plaintiff Class.

20           12.      Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
21 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,  
22 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned  
23 below was acting, at least in part, within the course and scope of that authority as such agent,  
24 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with  
25 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant  
26 are legally attributable to the other Defendants.

27           13.      Plaintiff is informed and believes, and based thereon alleges, that each of the  
28 Defendants sued herein was, at all relevant times hereto, the employer, owner, shareholder,

principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing agent, joint employer, and/or alter-ego of the remaining Defendants, and was acting, at least in part, within the course and scope of such employment and agency, with the express and implied permission, consent and knowledge, approval and/or ratification of the other Defendants. The above co-Defendants, managing agents, and supervisors aided, abetted, condoned, permitted, approved, authorized and/or ratified the unlawful acts described herein.

### **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. Defendant consistently required Plaintiff and Plaintiff class to perform work past their scheduled eight (8) hours of work, however, Plaintiff and Plaintiff class were not compensated for hours worked in excess of eight (8) hours per day or forty (40) hours per week. This was a routine and habitual practice, which required Plaintiff and those similarly situated to work many hours "off the clock."

16. 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.

17. During all, or a portion of the Class Period, Plaintiff and each member of the Plaintiff Class was employed by Defendant and each of them, in the State of California. Plaintiff and each of the Plaintiff Class members were non-exempt employees covered under one or more Industrial Welfare Commission (IWC) Wage Orders, and Labor Code section 510, and/or other applicable wage orders, regulations and statutes, and each Plaintiff Class member was not subject to an exemption for executive, administrative and professional employees, which imposed obligations on the part of the Defendant to pay Plaintiff and Plaintiff Class members lawful

1 overtime compensation. Plaintiff and Plaintiff Class were covered by one or more Industrial  
2 Welfare Commission (IWC) Wage Orders, and Cal. Labor Code section 226.7 and other  
3 applicable wage orders, regulations and statutes which imposed an obligation on the part of the  
4 Defendant to pay Plaintiff and Plaintiff Class rest and meal period compensation.

5 18. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff  
6 Class members for all hours worked.

7 19. During the Class Period, Defendant was obligated to pay Plaintiff and Plaintiff  
8 Class members overtime compensation for all hours worked over eight (8) hours of work in one  
9 (1) day or forty (40) hours in one (1) week, and double-time for hours worked in excess of twelve  
10 (12) in one day.

11 20. During the Class Period, Defendant was obligated to provide Plaintiff and Plaintiff  
12 Class with a work free meal and/or rest period(s).

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

18 22. Class members who ended their employment during the Class Period, but were not  
19 paid the above due compensation for all hours worked timely upon the termination of their  
20 employment as required by Cal. Labor Code sections 201-203, are entitled to penalties as  
21 provided by Cal. Labor Code section 203.

22 23. During the Class Period, the Defendant and each of them, required the Plaintiff  
23 and Class members to work off the clock as well as overtime without lawful compensation, in  
24 violation of the various applicable Wage Orders, regulations and statutes, and the Defendant: (1)  
25 Willfully failed and refused, and continues to fail and refuse to pay compensation for all hours  
26 worked, lawful overtime compensation to the Plaintiff Class members; and (2) willfully failed  
27 and refused, and continues to fail and refuse to pay due and owing wages promptly upon  
28 termination of employment to Plaintiff and certain Plaintiff Class members.

1 ///

2 24. During the Class Period, Defendant, and each of them failed and/or refused to  
3 schedule Plaintiff and Plaintiff Class in an overlapping manner so as to reasonably provide meal  
4 and/or rest breaks and/or shift relief for Plaintiff and Plaintiff Class, thereby causing members of  
5 the Plaintiff Class to work without being given paid ten (10) minute rest periods for every four  
6 (4) hours or major fraction thereof worked and without being given a thirty (30) minute meal  
7 period for shifts of at least five (5) hours and second thirty (30) minute meal periods for shifts of  
8 at least ten (10) hours during which Plaintiff Class were relieved of all duties and free to leave  
9 the premises.

10 25. Defendant further failed and/or refused to schedule Plaintiff and Plaintiff Class in  
11 an overlapping manner so as to reasonably ensure meal and/or rest breaks were taken within the  
12 required statutory time frame as required by law. Furthermore, Defendant failed and/or refused  
13 to pay any Plaintiff Class one (1) hour's pay at the employees' regular rate of pay as premium  
14 compensation for failure to provide rest and/or meal periods or to provide such rest and/or meal  
15 periods within the statutory time frame as a result of their scheduling policy.

16 **CLASS ALLEGATIONS**

17 26. Defendant consistently required Plaintiff and Plaintiff Class to do child  
18 observation packets after work hours, without compensation. This was a routine and habitual  
19 practice, which required Plaintiff and those similarly situated to work many hours "off the clock."

20 27. Plaintiff brings this action on behalf of herself and all other similarly situated  
21 persons, as a class action pursuant to California Code of Civil Procedure §382 on behalf of himself  
22 and all other similarly situated persons in the Plaintiff Class, which is composed of and defined  
23 as follows: All persons who are employed or have been employed by Defendant on or after four  
24 years prior to the commencement of this action who were not paid the legally requisite overtime  
25 rate and/or double-time rate for all hours worked in excess of eight (8) hours per workday and/or  
26 forty (40) hours per workweek, were not paid for all hours worked, were required to work off the  
27 clock, were denied meal and/or rest periods due to Defendant's failure to provide shift relief  
28 thereby depriving Plaintiff and Plaintiff Class of the requisite rest and/or meal periods altogether

1 or in the statutorily required time frame, and payments under Cal. Labor Code section 226.7 and  
2 to whom Defendant failed to pay wages of terminated or resigned employees under Cal. Labor  
3 Code §§201-203.

4 28. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to  
5 amend or modify the Class description with greater specificity or further division into subclasses  
6 or limitation to particular issues.

7 29. This action has been brought and may be maintained as a class action pursuant to  
8 Cal. Code of Civil Procedure §382 because there is a well-defined common interest of many  
9 persons and it is impractical to bring them all before the court.

10 30. This Court should permit this action to be maintained as a class action pursuant to  
11 Cal. Code of Civil Procedure §382 because:

- 12 (a) The questions of law and fact common to the Class predominate over any  
13 question affecting only individual members;
  - 14 (b) A class action is superior to any other available method for the fair and  
15 efficient adjudication of the claims of the members of the Class;
  - 16 (c) The Class is so numerous that it is impractical to bring all members of the  
17 Class before the Court;
  - 18 (d) Plaintiff and the other members of the Class will not be able to obtain  
19 effective and economic legal redress unless the action is maintained as a  
20 class action;
  - 21 (e) There is a community of interest in obtaining appropriate legal and  
22 equitable relief for the common law and statutory violations and other  
23 improprieties and in obtaining adequate compensation for the damages and  
24 injuries which Defendant's actions have inflicted upon the Class;
  - 25 (f) There is a community of interest in ensuring that the combined assets and  
26 available insurance of the Defendant is sufficient to adequately compensate  
27 members of the Class for the injuries sustained;
- 28



(g) Without class certification, the prosecution of separate actions by individual members of the Class would create a risk of:

(1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish an incompatible standard of conduct for the Defendant; and/or

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

(h) Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

### **FIRST CAUSE OF ACTION**

#### **Failure to Pay All Wages**

(By Plaintiff against Defendant)

31. Plaintiff realleges and incorporates paragraphs 1 through 30 of this Complaint as if fully alleged herein.

32. Plaintiff and Plaintiff Class regularly worked over eight (8) hours per day and forty (40) hours per week. Defendant failed to pay Plaintiff, and Plaintiff Class overtime premium and/or double-time premium for hours worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed for the Defendant. Defendant failed to schedule Plaintiff and Plaintiff Class in such a manner that allowed Plaintiff and Plaintiff Class to be relieved of their shift immediately, thereby causing Plaintiff and Plaintiff Class to work in excess of eight (8) hours per day and/or forty (40) hours per week. As such Plaintiff and Plaintiff Class seek overtime and/or double-time in an amount according to proof. Pursuant to Cal. Labor Code §1194, the Plaintiff Class seeks the payment of all overtime and/or double-time compensation which they

1 earned and accrued four (4) years prior to filing this Complaint, according to proof.

2 33. Defendant has willfully violated the Cal. Labor Code by failing to pay Plaintiff  
3 and Plaintiff Class all wages. Plaintiff and Plaintiff Class were denied wages as a result of  
4 Defendant's policy of having Plaintiff and Plaintiff Class work through meal and/or rest periods  
5 and having Plaintiff and Plaintiff Class work "off the clock." Further, Defendant has regularly  
6 violated the Cal. Labor Code with respect to meeting the requirements of paying wages earned,  
7 including, overtime, double-time, and remuneration when calculating the employees regular rate  
8 of pay, as herein before alleged. Defendant has intentionally excluded remuneration that must be  
9 included in all employees' regular rate of pay in order to avoid payment of overtime wages and  
10 other benefits in violation of the Cal. Labor Code and the order issued by the IWC. Thereby,  
11 Defendant is able to reduce its overhead and operating expenses and gain an unfair advantage  
12 over competing companies complying with state law.

13 34. Additionally, Plaintiff and Plaintiff Class are entitled to attorneys' fees, costs,  
14 pursuant to California Labor Code §§218.5, 226, 1194, and prejudgment interest.

## 15 **SECOND CAUSE OF ACTION**

### 16 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

17 (By Plaintiff against Defendant)

18 35. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
19 paragraphs 1 through 34 as if fully alleged herein.

20 36. Labor Code sections 226.7 and 512 provide that no employer shall employ any  
21 person for a work period of more than five (5) hours without providing a meal period of not less  
22 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours  
23 without a second meal period of not less than thirty (30) minutes.

24 37. Labor Code section 226.7 provides that if an employer fails to provide an  
25 employee a meal period in accordance with this section, the employer shall pay the employee one  
26 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal  
27 period is not provided in accordance with this section.

28 38. Defendant failed to schedule Plaintiff and similarly situated persons in an

1 overlapping manner so as to reasonably ensure that Plaintiff and Plaintiff Class could take and/or  
2 receive such meal periods within the statutory timeframe. As a result, Plaintiffs and Plaintiff Class  
3 were often forced to forego a meal period and/or work during their meal period. In so doing,  
4 Defendant has intentionally and improperly denied meal periods to the Plaintiffs and Plaintiff  
5 Class in violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

6 39. At all times relevant hereto, Plaintiff and Plaintiff Class have worked more than  
7 five (5) hours in a workday.

8 40. At varying times relevant hereto, Plaintiff and Plaintiff Class have worked more  
9 than eight (8) hours in a workday.

10 41. At all times relevant hereto, the Defendant, and each of them, failed to schedule  
11 Plaintiff and similarly situated persons in a manner so as to reasonably provide meal and/or work  
12 free meal period as required by Labor Code sections 226.7 and 512.

13 42. By virtue of the Defendant's failure to schedule Plaintiff and Plaintiff Class in such  
14 a way as to provide a meal period, and/or work free meal period to the Plaintiff and Plaintiff Class,  
15 thereby causing Plaintiff and Plaintiff Class to suffer, and will continue to suffer, damages in the  
16 amounts which is presently unknown, but which exceed the jurisdictional limits of this Court and  
17 which will be ascertained according to proof at trial.

18 43. Plaintiff individually, and on behalf of the Plaintiff Class, requests recovery of  
19 meal period compensation pursuant to Labor Code section 226.7 which they are owed beginning  
20 four (4) years prior to filing this complaint as well as the assessment of any statutory penalties  
21 against the Defendant, and each of them, in a sum as provided by the Labor Code and/or other  
22 statutes.

### 23 **THIRD CAUSE OF ACTION**

#### 24 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**

25 (By Plaintiff against Defendant)

26 44. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
27 paragraphs 1 through 43 as if fully alleged herein.

28 45. Labor Code section 226.7 provides that employers authorize and permit all

1 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

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

6 47. Defendant failed and or refused to implement a relief system by which Plaintiff  
7 and Plaintiff Class could receive rest breaks and/or work free rest breaks. Furthermore, due to  
8 Defendant's relief system, Plaintiff and Plaintiff Class did not receive their rest breaks within the  
9 required statutory time frame. By and through their actions, Defendant intentionally and  
10 improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of Labor Code  
11 sections 226.7 and 512.

12 48. At all times relevant hereto, the Plaintiff and Plaintiff Class, have worked more  
13 than four (4) hours in a workday.

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

19 50. Plaintiff, individually, and on behalf of employees similarly situated, requests  
20 recovery of rest period compensation pursuant to Labor Code section 226.7, which they are owed  
21 beginning four (4) years prior to filing this complaint as well as the assessment of any statutory  
22 penalties against the Defendant, in a sum as provided by the Labor Code and/or any other statute.

#### 23 **FOURTH CAUSE OF ACTION**

##### 24 **Failure to Timely Pay Wages During Employment**

25 (By Plaintiff against Defendant)

26 51. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
27 paragraphs 1 through 50 as if fully alleged herein.

28 52. During the Class period, Labor Code section 204 applied to Defendant's

1 employment of Plaintiffs and the rest of the Class. At all times relevant hereto, Labor Code section  
2 204 provided that all wages earned by any employee, such as a member of the Class, in any  
3 employment between the 1st and 15th days, inclusive, of any calendar month, other than those  
4 wages due upon termination of an employee, are due and payable between the 16th and 26th day  
5 of the month during which the work were performed.

6 53. Furthermore, at all times relevant hereto, Labor Code section 204 provides that all  
7 wages earned by any employee, such as a member of the Class, in any employment between the  
8 16th and last day, inclusive, of any calendar month, other than those wages due upon termination  
9 of an employee, are due and payable between the 1st and 10th day of the following month.

10 54. During the Class period, Defendant failed to pay Plaintiff and the rest of the Class  
11 wages for all hours worked. Specifically, Plaintiff is informed and believes and thereon alleges  
12 that Defendant did not compute and/or improperly deducted time from the actual or correct  
13 amount of wages due Plaintiff and the rest of the class members.

14 55. During the Class period, Defendant failed to pay Plaintiff and the rest of the  
15 Classes all wages earned and all compensation owed and therefore violated Labor Code section  
16 204. Accordingly, Plaintiff and the rest of the Class are entitled to recover from Defendant all  
17 damages, penalties and other remedies available for violation of Labor Code section 204.

## 18 **FIFTH CAUSE OF ACTION**

### 19 **Failure to Pay Wages of Terminated or Resigned Employees**

20 (By Plaintiff against Defendant)

21 56. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
22 paragraphs 1 through 55 as if fully alleged herein.

23 57. Plaintiff and the Plaintiff Class were required to work off the clock, and as a result  
24 were not compensated for all hours worked. Defendant refused and/or failed to promptly  
25 compensate Plaintiff and Plaintiff Class wages owed as a result of Defendant requiring Plaintiff  
26 and Plaintiff Class to work off the clock.

27 58. Plaintiff and/or the members of the Plaintiff Class, who ended their employment  
28 with the Defendant during the Class Period, were entitled to be promptly paid for all hours

1 worked, lawful overtime compensation, and other premiums, as required by Labor Code sections  
2 201 through 203. Defendant refused and/or failed to promptly compensate Plaintiff and Plaintiff  
3 Class wages owed as a result of Plaintiff and Plaintiff Class being required to work off the clock,  
4 as well as pay overtime and/or double-time compensation as a result of working in excess of eight  
5 (8) hours per day and/or forty (40) hours per week. Plaintiff and Plaintiff Class seek the payment  
6 of penalties pursuant to Labor Code section 203, according to proof.

### 7 **SIXTH CAUSE OF ACTION**

#### 8 **Failure to Keep Accurate Payroll Records (Labor Code Sections 1174, 226, and 226.3)**

9 (By Plaintiff against Defendant)

10 59. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
11 paragraphs 1 through 58 as if fully alleged herein.

12 60. Labor Code section 1174(d), requires an employer to keep at a central location in  
13 California or at the plant or establishment at which the employee is employed, payroll records  
14 showing the hours worked daily, and the wages paid to, each employee. Labor Code section  
15 226(a) requires an employer to provide employees—either as a detachable part of the check, draft,  
16 or voucher paying the employee's wages, or separately when wages are paid by personal check  
17 or cash—an accurate itemized wage statement in writing.

18 61. Labor Code section 226(e) provides that if an employer knowingly and  
19 intentionally fails to provide a statement itemizing, inter alia, the gross and net wages earned, the  
20 total hours worked by the employee and the applicable hourly overtime rates, causing the  
21 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty  
22 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,  
23 up to four thousand dollars (\$4,000). Plaintiff is informed and believes that Defendant willfully  
24 failed to make or keep accurate records for Plaintiff and Plaintiff Class.

25 62. IWC Wage Orders require that every employer shall keep accurate information  
26 with respect to each employee, including time records showing when each employee begins and  
27 ends each work periods, the total daily hours worked by each employee and the total hours worked  
28 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that

1 Defendant willfully and intentionally failed to make and/or keep records which accurately reflect  
2 the hours worked by Plaintiff and Plaintiff Class. Specifically, Plaintiff believes that Defendant's  
3 records do not accurately reflect where Plaintiff and Plaintiff Class worked during their meal  
4 and/or rest breaks. Furthermore, Defendant's records do not reflect all hours worked, specifically  
5 the hours Plaintiff and Plaintiff Class were required to work off the clock and for all hours spent  
6 attending weekly meetings.

7 63. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll  
8 records, as described above, violated Labor Code sections 1174(d) and 226(a), and the applicable  
9 wage order. Pursuant to Labor Code § 2699(f)(2), Plaintiff and the Plaintiff Class are entitled to  
10 penalties of \$100.00 and for the initial violation and \$200.00 for each subsequent violation for  
11 every pay period during which these records and information were not kept by Defendant.

12 64. Plaintiff is informed and believes that Defendant's failure to keep and maintain  
13 accurate records and information, as described above, was willful, and Plaintiff and the Plaintiff  
14 Class are entitled to statutory penalties pursuant to Labor Code section 1174.5.

## 15 **SEVENTH CAUSE OF ACTION**

### 16 **Unfair Competition**

17 (By Plaintiff against Defendant)

18 65. Plaintiff realleges and incorporates by reference, as though fully set forth herein,  
19 paragraphs 1 through 64 of this complaint.

20 66. Business and Professions Code sections 17200 et seq. (also referred to herein as  
21 the "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition  
22 in the form of any unlawful, unfair or fraudulent business act or practice.

23 67. Business and Professions Code section 17204 allows "any person who has suffered  
24 injury in fact and has lost money or property as a result of such unfair competition" to prosecute  
25 a civil action for violation of the UCL.

26 68. Labor Code section 90.5 subdivision (a) states it is the public policy of California  
27 to vigorously enforce minimum labor standards in order to ensure employees are not required to  
28 work under substandard and unlawful conditions, and to protect employers who comply with the

1 law from those who attempt to gain competitive advantage at the expense of their workers by  
2 failing to comply with minimum labor standards.

3         69. Beginning at an exact date unknown to Plaintiff, but at least since the date four  
4 years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined  
5 by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent business  
6 practices and acts described in this complaint including but not limited to violations of Labor  
7 Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1194, and 1194.2; as well as other  
8 statutes.

9         70. The violations of these laws and regulations, as well as of the fundamental  
10 California public policies protecting workers, serve as unlawful predicate acts and practices for  
11 purposes of Business and Professions Code sections 17200 et seq.

12         71. The acts and practices described above constitute unfair, unlawful, and fraudulent  
13 Business Practices, and unfair competition, within the meaning of Business and Professions Code  
14 sections 17200 et seq. Among other things, the acts and practices have forced Plaintiff and other  
15 similarly situated workers to labor for many hours in a row without receiving the meal and rest  
16 periods and overtime compensation, to which they are entitled by law, while enabling Defendant  
17 to gain an unfair competitive advantage over law-abiding employers and competitors.

18         72. As a result of Defendant's acts, Plaintiff has suffered injury in fact in being denied  
19 their statutorily entitled meal and rest periods and full compensation for hours of labor. As a result  
20 of Defendant's unlawful acts of unfair competition, Plaintiff has lost money and property in the  
21 form of a loss of wages in an amount to be proven at trial.

22         73. As a direct and proximate result of the aforementioned acts and practices, Plaintiff  
23 and the Class have suffered a loss of wages in an amount to be proven at trial.

24         74. Business and Professions Code sections 17203 provides that a court may make  
25 such orders or judgments as may be necessary to prevent the use or employment by any person  
26 of any practice which constitutes unfair competition. Injunctive relief is necessary and  
27 appropriate to prevent Defendant from repeating their unlawful, unfair, and fraudulent business  
28 acts and business practices alleged above.



75. Business and Professions Code sections 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiffs and the Class are entitled to restitution pursuant to Business and Professions Code section 17203 for wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods taken away from them during the four-year period prior to the filing of this complaint.

76. Business and Professions Code section 17202 provides: “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

77. Plaintiff's success in this action will enforce important rights affecting the public interest, and, in that regard, Plaintiff sues on behalf of the general public as well as herself and others similarly situated. Plaintiff and the Plaintiff Class seek and are entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing them.

78. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing them to pay attorney's fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment as follows:


1. For nominal damages;
2. For compensatory damages;
3. For restitution of all monies due to Plaintiff and Plaintiff Class, and disgorged profits from the unlawful business practices of Defendant;
4. For waiting time penalties pursuant to *Labor Code* § 203, on behalf of the terminated or resigned employees;

- 1 5. For penalties pursuant to *Labor Code* §§ 226, 226(e), 226.7, 512 and 1194, and as  
2 provided for by *Labor Code* § 2699;
- 3 6. For interest accrued to date;
- 4 7. Injunctive relief, enjoining Defendants from engaging in the unlawful and unfair  
5 business practices complained herein;
- 6 8. Declaratory relief, enjoining Defendants' practices as being unlawful and unfair business  
7 practices within the meaning of *Bus. & Prof. Code* §§ 17200, et seq., and declaring  
8 Defendant has unlawfully treated Plaintiff and Plaintiff Class, failed to pay all wages  
9 and overtime compensation in violation of California law, failed to pay wages to former  
10 employees Plaintiff and other certain members of Plaintiff Class, failed to provide  
11 Plaintiff and Plaintiff Class accurate itemized wage statements upon payment of wages,  
12 and declaring the amounts of damages, penalties, equitable relief, costs, and attorney's  
13 fees Plaintiff and Plaintiff Class are entitled to.
- 14 9. For costs of suit and expenses incurred herein pursuant to *Labor Code* §§ 226 and 1194;
- 15 10. For reasonable attorneys' fees pursuant to *Labor Code* §§ 226 and 1194 and; for all such  
16 other and further relief as the Court may deem just and proper.

17  
18 Dated: July 3, 2017

**MAHONEY LAW GROUP, APC**

19  
20 By:

  
Kevin Mahoney  
Keren B. Serrano  
Attorneys for Plaintiff LEONEL MERIDA  
as an individual and on behalf of all  
employees similarly situated

**DEMAND FOR JURY TRIAL**

Plaintiff LEONEL MERIDA hereby demands a jury trial on all issues so triable.

Dated: July 3, 2017

**MAHONEY LAW GROUP, APC**

By:

  
Kevin Mahoney

Keren B. Serrano

Attorneys for Plaintiff LEONEL MERIDA  
as an individual and on behalf of all  
employees similarly situated