

1 STAN S. MALLISON (SBN 184191)  
2 HECTOR R. MARTINEZ (SBN 206336)  
3 MARCO A. PALAU (SBN 242340)  
4 JOSEPH D. SUTTON (SBN 269951)  
5 ERIC S. TRABUCO (SBN 295473)  
6 MALLISON & MARTINEZ  
1939 Harrison Street, Suite 730  
Oakland, California 94612  
Telephone: (510) 832-9999  
Facsimile: (510) 832-1101

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

10 FLOR CRISOSTOMO; MARIBEL  
11 HERNANDEZ; and JUAN SERGIO  
12 ESQUIVEL, individually and acting in the  
interest of other current and former employees,

Plaintiffs,

vs.

15 15 MAIN LLC; a California Limited Liability  
16 Company; and DOES 1 through 20, inclusive,

Defendants.

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 01 2016

CLERK OF THE SUPERIOR COURT  
By Ciceli Johnson Deputy

Case No. RG 16 8 0 9 7 7 2

COMPLAINT

CLASS ACTION

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Compensation;
3. Failure to Provide Rest or Pay Additional Wages in Lieu Thereof;
4. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
5. Failure to Indemnify Employees for All Necessary Expenditures Or Losses Incurred
6. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions
7. Failure to Pay All Wages Owed Upon Termination or Resignation
8. Breach of Contract
9. Violation of Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*
10. Penalties Pursuant to Labor Code's Private Attorney General Act, Cal. Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL  
REQUEST FOR COMPLEX DESIGNATION

1           1.       Plaintiffs FLOR CRISOSTOMO; MARIBEL HERNANDEZ; and JUAN SERGIO  
2 ESQUIVEL bring this action against 15 MAIN LLC and Does 1 through 20, inclusive, individually  
3 and on behalf of all other similarly situated individuals employed under common circumstances  
4 and facts. The allegations made in this complaint are based on knowledge of Plaintiffs FLOR  
5 CRISOSTOMO; MARIBEL HERNANDEZ; and JUAN SERGIO ESQUIVEL, except those  
6 allegations made on information and belief, which are based on the investigation of their counsel.  
7

8           **I.       NATURE OF THE ACTION**

9           2.       This is a wage and hour class action to vindicate the rights afforded employees by  
10 California labor law. This action is brought by Plaintiffs FLOR CRISOSTOMO, MARIBEL  
11 HERNANDEZ and JUAN SERGIO ESQUIVEL (herein after collectively referred to as  
12 “PLAINTIFFS”) for themselves and on behalf of a Class of similarly situated individuals against  
13 15 MAIN LLC and Does 1 through 20, inclusive (hereinafter collectively referred to as  
14 “Defendants”). In an anticipated amended complaint, Plaintiffs’ California Labor Code Private  
15 Attorney General Act (Labor Code § 2698 et seq) (“PAGA”) claim will be brought as an  
16 enforcement action seeking penalties and other remedies on behalf of the State of California and  
17 current and former employees as expressly permitted by that statute. Specifically, Plaintiffs intend  
18 to bring a PAGA cause of action against the currently named Defendants and name additional  
19 individual defendants pursuant to Labor Code Section 558, including but not limited to  
20 CHRISTIAN IRABIEN, CHRIS PASTENA, MICHAEL IGLESIAS and ADELAR RODGERS.  
21 Plaintiffs intends to comply with all PAGA administrative requirements for this purpose.

22           3.       This action revolves around the systematic failure by Defendants to pay California  
23 non-exempt employees, including PLAINTIFFS and the Class, in conformance with California  
24 law. Defendant 15 MAIN LLC and Does 1 through 20 have employed PLAINTIFFS and the Class  
25 directly or as agents of one another and are referred to collectively herein as “EMPLOYER  
26 DEFENDANTS.” Plaintiffs intend to bring claims against CHRISTIAN IRABIEN, CHRIS  
27 PASTENA, MICHAEL IGLESIAS and ADELAR RODGERS pursuant to California Labor Code  
28 § 558 (and other sections) and the Private Attorneys General Act (California Labor Code §§ 2698

1 et seq.). PLAINTIFFS allege that CHRISTIAN IRABIEN, CHRIS PASTENA, MICHAEL  
2 IGLESIAS and ADELAR RODGERS are “persons” who violated or caused to be violated sections  
3 of the California Labor Code. As such, CHRISTIAN IRABIEN, CHRIS PASTENA, MICHAEL  
4 IGLESIAS and ADELAR RODGERS are liable for penalties and wages which PLAINTIFFS may  
5 seek through PAGA for themselves, current and former employees, and the State of California and  
6 is sued solely pursuant to PAGA. CHRISTIAN IRABIEN, CHRIS PASTENA, MICHAEL  
7 IGLESIAS and ADELAR RODGERS, and the EMPLOYER DEFENDANTS are collectively  
8 hereinafter referred to as the “PAGA DEFENDANTS.”

9 4. The core violations PLAINTIFFS allege against the EMPLOYER DEFENDANTS  
10 are: (1) failure to pay all minimum and overtime wages owed; (2) failure to keep accurate time  
11 records; (3) failure to provide rest or meal periods (or pay the statutory additional wages due); (4)  
12 and failure to reimburse expenses incurred.

13 5. EMPLOYER DEFENDANTS have refused to pay the wages due and owed to  
14 PLAINTIFFS and Class members under the express provisions of the California Labor Code,  
15 which in turn has resulted in additional Labor Code violations entitling PLAINTIFFS and the Class  
16 to prompt payment of wages and penalties. The PAGA DEFENDANTS caused the violations at  
17 issue and benefitted financially from these violations.

18 6. As a result of the violations alleged herein, all Defendants are subject to PAGA  
19 penalties, which PLAINTIFFS seek in this lawsuit for themselves, EMPLOYER DEFENDANTS’  
20 current and former employees, and the State of California. PLAINTIFFS are aggrieved employees  
21 within the meaning of Labor Code §§ 2698 et seq. and will comply with the pre-filing  
22 requirements of PAGA. Pursuant to Labor Code § 2699.3(a), PLAINTIFFS will give written notice  
23 by certified mail to Defendants and the California Labor & Workforce Development Agency  
24 (“LWDA”) of the wage and hour violations alleged herein and wait the statutorily required time.

25 7. PLAINTIFFS, for themselves and the Class, also seek injunctive relief requiring  
26 each Defendant to comply with all applicable California labor laws and regulations in the future  
27 and preventing the EMPLOYER DEFENDANTS from engaging in and continuing to engage in  
28 unlawful and unfair business practices. PLAINTIFFS also seek declaratory relief enumerating

1 Defendants violations so that the Defendants and the general public will have clarity and guidance  
2 with regards to Defendants' future employment practices.

## 3 4 **II. JURISDICTION AND VENUE**

5 8. This case is subject to the jurisdiction of this court pursuant to the California Labor  
6 Code, California Business and Professions Code, and California Code of Civil Procedure.  
7 Defendants are all California Corporations, businesses, or DBA doing acts in Alameda County,  
8 California. Defendants are qualified to do business in California and regularly conduct business in  
9 Alameda County, California.

10 9. Federal courts may not exercise jurisdiction over this case pursuant to the Class  
11 Action Fairness Act of 2005. Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title  
12 28 of the United States Code)("CAFA") because, as of the date of the filing and service of this  
13 complaint and on information and belief, more than two-thirds of the members of all proposed  
14 plaintiff classes in the aggregate, and the primary defendants, are citizens of California, the State in  
15 which the action was originally filed. Alternatively, this case is not subject to jurisdiction in  
16 federal court pursuant to CAFA because: (a) more than two-thirds of the members of the proposed  
17 plaintiff class(es) in the aggregate are citizens of California where this case is originally filed; (b)  
18 significant relief is sought from Defendants by members of the plaintiff class whose alleged  
19 conduct forms a significant basis for the claims asserted by the proposed plaintiff class, (c) the  
20 Defendants are citizens of California; (d) principal injuries resulting from the alleged conduct or  
21 related conduct of Defendants was incurred in California, and (e) on information in belief, during  
22 the 3-year period preceding the filing of this class action, no other class action has been filed  
23 asserting the same or similar factual allegations against Defendants on behalf of the same or other  
24 persons.

25 10. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395  
26 because the County of Alameda is the county in which most of the Defendants reside and where  
27 the majority of the acts occurred including the underlying policy decisions to intentionally violate  
28 and permit the violation of the California Labor Code, California Contract law, and California

1 Business and Professions Code. PLAINTIFFS have worked for Defendants in Alameda County.

2  
3 **III. PARTIES**

4 **Plaintiffs**

5 11. Plaintiff FLOR CRISOSTOMO ("CRISOSTOMO") is an individual residing in  
6 Alameda County. She was employed as a non-exempt employee by EMPLOYER DEFENDANTS  
7 in and around the County of Alameda until approximately October, 2015. Plaintiff  
8 CRISOSTOMO is an aggrieved employee who has been subjected to the violations and unlawful  
9 employment practices described herein, and who, as a result, has suffered injury in fact and has lost  
10 money or property.

11 12. Plaintiff MARIBEL HERNANDEZ ("HERNANDEZ") is an individual residing in  
12 Alameda County. She was employed as a non-exempt employee by EMPLOYER DEFENDANTS  
13 in and around the County of Alameda until the approximately October, 2015. Plaintiff  
14 HERNANDEZ is an aggrieved employee who has been subjected to the violations and unlawful  
15 employment practices described herein, and who, as a result, has suffered injury in fact and has lost  
16 money or property.

17 13. Plaintiff JUAN SERGIO ESQUIVEL ("ESQUIVEL") is an individual residing in  
18 Alameda County. He was employed as a non-exempt employee by EMPLOYER DEFENDANTS  
19 in and around the County of Alameda until the approximately October, 2015. Plaintiff ESQUIVEL  
20 is an aggrieved employee who has been subjected to the violations and unlawful employment  
21 practices described herein, and who, as a result, has suffered injury in fact and has lost money or  
22 property.

23 **Defendants**

24 14. The following allegations as to Defendants are made on information and belief, and  
25 are likely to have evidentiary support after a reasonable opportunity for further investigation or  
26 discovery.

27 15. On information and belief, Defendant 15 MAIN LLC is a California corporation  
28 that operates a restaurant business, employing PLAINTIFFS and the Class of non-exempt

1 employees PLAINTIFFS seek to represent in this lawsuit. Defendant 15 MAIN LLC operates out  
2 of its business address listed with the California Secretary of State, which is 2337 Broadway,  
3 Oakland, CA 94612. The agent for service of process is Jana Pastena, 180 2<sup>nd</sup> Street, #315,  
4 Oakland, CA 94607.

5 16. On information and belief, Defendant CHRISTIAN IRABIEN is a person who  
6 violated or caused the violations of the California Labor Code and provisions regulating hours and  
7 days of work as detailed in the applicable Industrial Welfare Commission Order. At all relevant  
8 times, CHRISTIAN IRABIEN has been an Executive Chef for Defendant 15 MAIN LLC; he has  
9 had complete authority over all labor policies and practices, including those resulting in violations  
10 as described in this complaint; and he has actively violated or caused the violations alleged herein.

11 17. On information and belief, CHRIS PASTENA is a person who violated or caused  
12 the violations of the California Labor Code and provisions regulating hours and days of work as  
13 detailed in the applicable Industrial Welfare Commission Order. At all relevant times, CHRIS  
14 PASTENA has been a business partner for Defendant 15 MAIN LLC; he has had complete  
15 authority over all labor policies and practices, including those resulting in violations as described  
16 in this complaint; and he has actively violated or caused the violations alleged herein.

17 18. On information and belief, MICHAEL IGLESIAS is a person who violated or  
18 caused the violations of the California Labor Code and provisions regulating hours and days of  
19 work as detailed in the applicable Industrial Welfare Commission Order. At all relevant times,  
20 MICHAEL IGLESIAS has been a business partner for Defendant 15 MAIN LLC; he has had  
21 complete authority over all labor policies and practices, including those resulting in violations as  
22 described in this complaint; and he has actively violated or caused the violations alleged herein.

23 19. On information and belief, ADELAR RODGERS is a person who violated or  
24 caused the violations of the California Labor Code and provisions regulating hours and days of  
25 work as detailed in the applicable Industrial Welfare Commission Order. At all relevant times,  
26 ADELAR RODGERS has been an Executive Sous Chef for Defendant 15 MAIN LLC; he has had  
27 complete authority over all labor policies and practices, including those resulting in violations as  
28 described in this complaint; and he has actively violated or caused the violations alleged herein.

1           20.     On information and belief, Defendant 15 MAIN LLC, CHRIS PASTENA and  
2     MICHAEL IGLESIAS jointly employ the Class including PLAINTIFFS, and each is the agent,  
3     subsidiary, parent entity, owner and/or joint venturer of each other, and each is responsible for the  
4     violations alleged herein. At all relevant times to this action, EMPLOYER DEFENDANTS have  
5     been enterprises that employed PLAINTIFFS and the Class within the meaning of California law.

6           21.     PLAINTIFFS are ignorant of the true names or capacities of the Defendants sued  
7     herein under the fictitious names of DOES 1 through 20, inclusive, and therefore sue Defendants  
8     under such fictitious names. Plaintiffs will amend this complaint to allege the true names or  
9     capacities of these Defendants once they have been ascertained. PLAINTIFFS are informed and  
10    believe and thereon allege that each Defendant is responsible in some manner for the occurrences  
11    herein alleged, and that the damages herein alleged were actually and proximately caused by each  
12    Defendants' conduct.

13          22.     PLAINTIFFS are informed and believe and thereon allege that at all times  
14    mentioned herein, Defendants, including Does, were acting as the agent of every other Defendant,  
15    and all acts alleged to have been committed by any Defendant were committed on behalf of every  
16    other Defendant; and, at all times mentioned herein, each alleged act was committed by each  
17    Defendant and/or agent, servant, or employee of each Defendant, and each Defendant directed,  
18    authorized or ratified each such act. Plaintiffs are informed and believe and thereon allege that  
19    each Defendant, including Does, was the agent, employee, co-conspirator, business affiliate,  
20    subsidiary, parent entity, owner and/or joint venturer of each other Defendant; and, in causing the  
21    injuries herein alleged, each Defendant was acting at least in part within the course and scope of  
22    such agency, employment, conspiracy, joint employership, alter ego status, and/or joint venture,  
23    and with the permission and consent of each of the other Defendants.

24          23.     PLAINTIFFS and the Class bring this action pursuant to the California Labor Code  
25    and IWC wage orders, seeking unpaid minimum wages, regular wages, premium overtime wages,  
26    rest and meal period wages, statutory penalties, liquidated damages, declaratory, injunctive and  
27    other equitable relief, interest, reasonable attorneys' fees, and costs of suit.

28          24.     PLAINTIFFS and the Class, pursuant to the Unfair Competition Law ("UCL"),

1 Business and Professions Code §§ 17200 et seq., also seek injunctive relief, declaratory relief,  
2 restitution, and restitutionary disgorgement of all wages earned by PLAINTIFFS and the CLASS  
3 but retained by EMPLOYER DEFENDANTS as a result of their failure to comply with the above  
4 laws. PLAINTIFFS and the Class are also entitled to attorneys' fees, costs and interest pursuant to  
5 the private attorney provisions of California Code of Civil Procedure § 1021.5.

6 25. PLAINTIFFS and the Class also bring this action against all DEFENDANTS  
7 pursuant to the California Labor Code Private Attorneys General Act, §§ 2698 et seq. This act  
8 provides additional derivative remedies for all of the violations described in this Complaint.  
9 CHRISTIAN IRABIEN, CHRIS PASTENA, MICHAEL IGLESIAS and ADELAR RODGERS  
10 are individually liable for the violations herein alleged under PAGA and through, among other  
11 provisions, California Labor Code § 558, which provides for individual liability for all persons  
12 who violate or cause to be violated provisions of the California Labor Code and California  
13 Regulations, including IWC wage orders.

#### 14 15 **IV. FACTUAL BACKGROUND**

16 26. The claims of this lawsuit spring from a pattern of employer misconduct and  
17 wrongdoing that is a characteristic of the labor system utilized by Defendants, where unpaid and  
18 improperly paid labor, as alleged herein, is a common business practice. Defendants' actions in  
19 this case demonstrate a systematic disregard for the rights afforded to Plaintiffs and the Class under  
20 California wage and hour law. The following paragraphs detail specific violations of law giving  
21 rise to this action.

22 27. For at least four years prior to the filing of this action and through to the present  
23 (liability period for the UCL cause of action), EMPLOYER DEFENDANTS maintained and  
24 enforced against PLAINTIFFS and the Class unlawful practices and policies in violation of  
25 California wage and hour laws, including but not limited to:

- 26 a. forcing Class members, including PLAINTIFFS, to work "off the clock"  
27 time without compensation, including but not limited to time spent pre- and  
28 post-shift and/or time spent onsite during meal periods as required by



1 DEFENDANTS and under their control, in violation of California law, City  
2 of Oakland ordinances and public policy;

- 3 b. failing to provide Class members, including PLAINTIFFS, rest periods of at  
4 least (10) minutes per four (4) hours worked, or major fraction thereof, and  
5 failing to pay such employees one (1) hour of additional wages at the  
6 employees' regular rate of compensation for each workday that the rest  
7 period was not provided, in violation of California law and public policy;
- 8 c. requiring Class members, including PLAINTIFFS, to work at least five (5)  
9 hours without a full, thirty-minute, uninterrupted meal period, and failing to  
10 pay such employees one (1) hour of additional wages at the employees'  
11 regular rate of compensation for each workday that the meal period was not  
12 provided, in violation of California state laws and public policy;
- 13 d. failing to provide Class members, including PLAINTIFFS, with accurate  
14 itemized wage statements in violation of California law and public policy;
- 15 e. failing to maintain accurate time-keeping records for Class members,  
16 including PLAINTIFFS, in violation of California law and public policy;
- 17 f. failing to properly pay Class members, including PLAINTIFFS, time and a  
18 half and double overtime pursuant to California Labor Code provisions and  
19 Industrial Welfare Commission Wage Order 5-2001 in violation of  
20 California law and public policy;
- 21 g. failing to reimburse Class members, including PLAINTIFFS, for expenses  
22 incurred for the purchase and maintenance of tools/cutlery protective gear,  
23 supplies and/or vehicles in violation of California law and public policy; and
- 24 h. failing to pay to Class members, including PLAINTIFFS, statutory penalties  
25 pursuant to California Labor Code §§ 201, 202, 203, and 226, in violation of  
26 California law and public policy.

27 28. On information and belief, EMPLOYER DEFENDANTS were on notice of the  
28 improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful

1 and unfair business practices.

2 29. EMPLOYER DEFENDANTS have made it difficult to account with precision for  
3 the unlawfully withheld wages due to PLAINTIFFS and the Class during all relevant times herein,  
4 because EMPLOYER DEFENDANTS did not fully implement and preserve a record-keeping  
5 method to accurately record all hours worked and wages earned by its employees as required for  
6 non-exempt employees by California Labor Code §§ 226 and 1174(d), Industrial Welfare  
7 Commission Wage Order 5, and City of Oakland's Minimum Wage Ordinance 5.92.020.

8  
9 **V. CLASS ACTION ALLEGATIONS**

10 30. PLAINTIFFS bring this action on behalf of themselves and all others similarly  
11 situated as a class action pursuant to § 382 of the Code of Civil Procedure. PLAINTIFFS seek to  
12 represent the following "Class" composed of and defined as follows:

13 All persons who are employed or have been employed by DEFENDANTS  
14 in the State of California who, within four (4) years of the filing of this  
Complaint, have worked as non-exempt restaurant workers.

15 31. PLAINTIFFS reserve the right under Rule 1855(b), California Rules of Court, to  
16 amend or modify the class description with greater specificity to further divide into subclasses or to  
17 limit to particular issues.

18 32. This action has been brought and may properly be maintained as a class action  
19 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined  
20 community of interest in the litigation and the proposed Class is easily ascertainable.

21 **A. Numerosity**

22 33. The potential members of the Class as defined are so numerous that joinder of all  
23 the members of the Class is impracticable. While the precise number of Class Members has not  
24 been determined at this time, PLAINTIFFS are informed and believes that DEFENDANTS have  
25 employed dozens of restaurant employees in the State of California and who are, or have been,  
26 affected by DEFENDANTS' unlawful practices as alleged herein.

27 34. Upon information and belief, PLAINTIFFS allege that DEFENDANTS'  
28 employment records would provide information as to the number and location of all Class

1 Members. Joinder of all members of the proposed Class is not practicable.

2 **B. Commonality**

3 35. There are questions of law and fact common to the Class predominating over any  
4 questions affecting only individual Class Members. These common questions of law and fact  
5 include, without limitation:

- 6 a. Whether DEFENDANTS violated the California Labor Code, wage  
7 orders, City of Oakland's Minimum Wage Ordinance, and public policy  
8 by failing to compensate PLAINTIFFS and the other Class members for  
9 all hours worked;
- 10 b. Whether DEFENDANTS violated the California Labor Code, wage  
11 orders, or public policy by failing to provide daily rest periods to  
12 PLAINTIFFS and the other Class members for every four hours or  
13 major fraction thereof worked and failing to compensate said employees  
14 one hours of additional wages in lieu of each rest period denied;
- 15 c. Whether DEFENDANTS violated the California Labor Code, wage  
16 orders, or public policy by failing to provide a meal period to  
17 PLAINTIFFS and the other Class members on days they worked work  
18 periods in excess of five hours and failing to compensate said  
19 employees one hour additional wages in lieu of each meal period  
20 denied, and by deducting for lunch periods that were not taken;
- 21 d. Whether DEFENDANTS violated the California Labor Code, wage  
22 orders, or public policy by failing to reimburse employees for necessary  
23 costs incurred by PLAINTIFFS and the other Class members for the  
24 purchase and/or maintenance of tools/cutlery protective gear, supplies  
25 and/or vehicles;
- 26 e. Whether DEFENDANTS violated the California Labor Code, wage  
27 orders, or public policy by failing to, among other things, maintain and  
28 provide accurate records of PLAINTIFFS' and the other Class  
members' earned wages and work periods, accurately itemizing in wage  
statements all hours worked and wages earned, and accurately  
maintaining records pertaining to PLAINTIFFS and the other Class  
members;

- 1 f. Whether DEFENDANTS violated the California Labor Code, wage  
2 orders, or public policy by failing to pay all earned wages and/or  
3 premium wages due and owing at the time that any Class member's  
4 employment with DEFENDANTS terminated;
- 5 g. Whether DEFENDANTS violated the California Labor Code, wage  
6 orders, or public policy by willfully refusing to pay all wages due;
- 7 h. Whether DEFENDANTS committed unfair or unlawful business  
8 practices in violation of section 17200 *et seq.* of the Business and  
9 Professions Code.

10 **C. Typicality**

11 36. The claims of the named PLAINTIFFS are typical of the claims of the Class.  
12 PLAINTIFFS and all members of the Class sustained injuries and damages arising out of and  
13 caused by DEFENDANTS' common course of conduct in violation of California laws, regulations,  
14 and public policy as alleged herein.

15 **D. Adequacy of Representation**

16 37. PLAINTIFFS will fairly and adequately represent and protect the interests of the  
17 members of the Class. Counsel who represent PLAINTIFFS are competent and experienced in  
18 litigating large employment class actions.

19 **E. Superiority of Class Action**

20 38. A class action is superior to other available means for the fair and efficient  
21 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
22 questions of law and fact common to the Class predominate over any questions affecting only  
23 individual members of the Class. Each member of the Class has been damaged and is entitled to  
24 recovery by reason of DEFENDANTS' unlawful policy and/or practice of failing to compensate  
25 Class Members for all wages earned and due and engaging in the other unlawful practices herein  
26 complained of.

27 39. Class action treatment will allow those similarly situated persons to litigate their  
28 claims in the manner that is most efficient and economical for the parties and the judicial system.  
PLAINTIFFS are unaware of any difficulties that are likely to be encountered in the management

1 of this action that would preclude its maintenance as a class action.

2  
3 **VI. CAUSES OF ACTION**

4 **FIRST CLAIM FOR RELIEF**

5 **FAILURE TO PAY MINIMUM WAGE**  
6 **(CAL. LAB. CODE §§ 1197, 1194(A), 1194.2, WAGE ORDER 5**  
7 **& CITY OF OAKLAND ORDINANCE 5.92.020)**

8 **(AGAINST EMPLOYER DEFENDANTS)**

9 40. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

10 41. California Labor Code §1197, entitled "Pay of Less Than Minimum Wage," states:

11 The minimum wage for employees fixed by the commission is the minimum wage  
12 to be paid to employees, and the payment of a less wage than the minimum so fixed  
13 is unlawful.

14 42. The applicable minimum wage fixed by the commission for restaurant workers  
(Wage Orders 5) was set at eight dollars (\$8.00) per hour for all hours worked effective January 1,  
15 2008, but was raised to nine dollars \$9.00 per hour starting July 1, 2014. The minimum wage was  
16 again raised on January 1, 2016 to ten dollars (\$10.00) per hour.

17 43. The City of Oakland's Minimum Wage Ordinance 5.92.020 states:

18 A. Employers shall pay Employees no less than the Minimum wage for each hour  
19 worked within the geographic boundaries of the City.

20 B. Beginning on the 2<sup>nd</sup> of March, 2015, the Minimum Wage shall be an hourly  
21 rate of \$12.25. To prevent inflation from eroding its value, beginning on the  
22 1<sup>st</sup> of January 2016, and then each year thereafter on the 1<sup>st</sup> of January, the  
23 Minimum Wage shall increase by an amount corresponding to the prior  
24 calendar year's increase, if any, in the Consumer Price Index for urban wage  
25 earners and clerical workers for the San Francisco-Oakland-San Jose, CA  
26 metropolitan statistical area (or if such index is discontinued, then the most  
27 similar successor index.)  
28

1  
2           44.     The Defendants failed to pay minimum wage for all hours worked. In particular,  
3 PLAINTIFFS and the Class were required to work on a schedule that did not take into account  
4 actual hours worked. For example, PLAINTIFFS and the Class were not paid for the substantial  
5 amount of time for having to work pre- and post-shift and for having to work during their meal  
6 periods while under the control of Defendants and for the benefit thereof. Regardless of the time at  
7 which PLAINTIFFS and Class members arrived at the restaurant, they were not paid until the time  
8 predetermined by work schedules. Further, hours worked were not accurately recorded, since  
9 Defendants do not allow for the recording of time contemporaneously as shifts actually begin and  
10 end. These practices, among others, resulted in Defendants not paying the minimum wage for all  
11 hours worked. This violation of California minimum wage law and City of Oakland's Minimum  
12 Wage Ordinance was substantial and occurred on a daily basis due to Defendants' employment  
13 practices.

14           45.     As a result of Defendants' violations of the minimum wage, by failing to record and  
15 pay minimum wage for all hours worked, Defendants violated California Labor Code §226(a),  
16 inaccurately stating gross wages earned, total hours work, deductions, net wages and other issues  
17 as described above.

18           46.     Defendants have the ability to pay minimum wages for all time worked but have  
19 willfully refused to pay such wages, intending to secure instead a discount upon their indebtedness  
20 to PLAINTIFFS and the Class for all hours worked, and intending to annoy harass, oppress, hinder  
21 delay or defraud PLAINTIFFS and the Class, in violation of California Labor Code §226.6.

22           47.     California Labor Code §226.6 states:

23           Any employer who knowingly and intentionally violates the provisions of Section  
24 226 or 226.2, or any officer, agent, employee, fiduciary, or other person who has the  
25 control, receipt, custody, or disposal of, or pays, the wages due any employee, and  
26 who knowingly and intentionally participates or aids in the violation of any  
27 provision of Section 226 or 226.2 is guilty of a misdemeanor and, upon conviction  
28 thereof, shall be fined not more than one thousand dollars (\$1,000) or be imprisoned  
not to exceed one year, or both, at the discretion of the court. That fine or  
imprisonment, or both, shall be in addition to any other penalty provided by law.

1 Defendants' violation of § 226 also constitutes a misdemeanor, pursuant to § 226.6, a predicate  
2 violation of California Business & Profession Code §§ 17200, and a predicate violation of Labor  
3 Code § 2699.

4 48. The Minimum Wage provisions of California Labor Code are enforceable by  
5 private civil action pursuant to California Labor Code § 1194(a), which states:

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

10 As such, PLAINTIFFS and the Class may bring this action for minimum wages, interest, costs of  
11 suit and attorney's fees pursuant to California Labor Code § 1194(a).

12 49. As described in California Labor Code § 1194.2, any such action incorporates the  
13 applicable wage order of the California Labor Commission. California Labor Code § 1194.2  
14 states:

15 In any action under Section 1194 ... to recover wages because of the payment of a  
16 wage less than the minimum wages fixed by an order of the commission, an  
employee shall be entitled to recover liquidated damages in an amount equal to the  
17 wages unlawfully unpaid and interest thereon.

18 50. As described herein, this is an action under California Labor Code §1194 to recover  
19 wages on account of Defendants' failure to pay minimum wages as described in California Labor  
20 Code §§ 1197, 1194(a), 1194.2 and any applicable wage orders, including IWC Order 5.  
21 Therefore, PLAINTIFFS and the Class are also entitled to recover liquidated damages in an  
22 amount equal to the wages unlawfully unpaid and interest thereon.

23 51. The City of Oakland's Minimum Wage Ordinance is enforceable by private action  
24 pursuant to Ordinance 5.92.050(G) with states:

25 Private Right of Action. Any Person claiming harm from a violation of this  
26 Chapter may bring an action against the Employer in court to enforce the  
27 provisions of this Chapter and shall be entitled to all remedies available to  
28 remedy any violation of this Chapter, including but not limited to back pay,  
reinstatement and/or injunctive relief. Violations of this Chapter are  
declared to irreparably harm the public and covered employees generally.  
The Court shall award reasonable attorney's fees, witness fees and expenses  
to any plaintiff who prevails in an action to enforce this Chapter. Any  
Person who negligently or intentionally violates this Chapter shall be liable

1 for civil penalties for each violation with a maximum of one thousand  
2 dollars (\$1000.000) per violation, the amount to be determined by the court.  
3 No criminal penalties shall attach for any violation of this Chapter, nor shall  
4 this Chapter give rise to any cause of action for damages against the City.

5 52. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and  
6 below.

7 **SECOND CLAIM FOR RELIEF**

8 **FAILURE TO PAY OVERTIME COMPENSATION**  
9 **(CALIFORNIA LABOR CODE §§ 510, 1194, 1194.2 & WAGE ORDER 5)**

10 **(AGAINST EMPLOYER DEFENDANTS)**

11 53. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

12 54. California Labor Code § 510(a) states:

13 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in  
14 one workday and any work in excess of 40 hours in any one work week and the first  
15 eight hours worked on the seventh day of work in any one workweek shall be  
16 compensated at the rate of no less than one and one-half times the regular rate of  
17 pay for an employee. Any work in excess of 12 hours in one day shall be  
18 compensated at the rate of no less than twice the regular rate of pay for an  
19 employee. In addition, any work in excess of eight hours on any seventh day of a  
20 workweek shall be compensated at the rate of no less than twice the regular rate of  
21 pay of an employee.

22 *See also* California Labor Code § 1185; Industrial Welfare Commission Wage Order 5. California  
23 Labor Code § 500 defines, "Workday" and "Day" to mean any consecutive 24-hour period  
24 commencing at the same time each calendar day, and defines "workweek" and "week" to mean  
25 "any seven consecutive days starting with the same calendar day each week."

26 55. As described herein, Defendants violated California Labor Code § 510 and the  
27 applicable wage order by employing PLAINTIFFS and the Class in excess of the above  
28 requirements with out overtime and doubletime pay.

56. PLAINTIFFS and the Class may enforce these provisions pursuant to Labor Code  
including § 1194(a), as well as Business and Professions Code §§ 17200 et seq.

57. California Labor Code § 1194(a) states:



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

4 As a result, PLAINTIFFS and the Class are entitled to the unpaid balance of the full amount of the  
5 above noted overtime compensation, interest, reasonable attorney's fees and costs of suit.

6 58. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and  
7 below.

8 **THIRD CLAIM FOR RELIEF**

9 **FAILURE TO PROVIDE REST PERIODS OR PAY ADDITIONAL WAGES IN LIEU**  
10 **THEREOF**

11 (CALIFORNIA LABOR CODE §§ 226.7)

12 (AGAINST EMPLOYER DEFENDANTS)

13 59. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

14 60. Defendants did not authorize or permit PLAINTIFFS and, on information and  
15 belief, the Class to take all required rest periods. PLAINTIFF and, on information and belief, the  
16 Class routinely worked four-hour periods during the day without rest periods or compensation in  
17 lieu thereof. Defendants' employment practices did not provide for rest periods as mandated by  
18 California law.

19 61. California Labor Code §226.7 states:

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

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

25 62. The applicable wage order issued by the Industrial Welfare Commission is Wage  
26 Order 5, which states with regards to rest periods:

27 (A) Every employer shall authorize and permit all employees to take rest periods,  
28 which insofar as practicable shall be in the middle of each work period. The  
authorized rest period time shall be based on the total hours worked daily at the rate

1 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.  
2 However, a rest period need not be authorized for employees whose total daily work  
3 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.

4 (B) If an employer fails to provide an employee a rest period in accordance with the  
5 applicable provisions of this Order, the employer shall pay the employee one (1)  
6 hour of pay at the employee's regular rate of compensation for each work day that  
the rest period is not provided.

7 63. Defendants violated California law by failing to provide rest periods mandated by  
8 Labor Code § 226.7 and Wage Orders 5 and others, and by failing to provide one hour pay at the  
9 employees' regular rate of compensation for each work day that a required rest period was not  
10 provided.

11 64. PLAINTIFFS and, on information and belief, the Class did not voluntarily or  
12 willfully waive rest periods. Any express or implied waivers obtained from PLAINTIFFS and  
13 Class members were not willfully obtained, was not voluntarily agreed to, was a condition of  
14 employment, or part of a contract of an unlawful adhesion.

15 65. By failing to keep adequate time records required by sections 226 and 1174(d) of  
16 the Labor Code, Defendants have injured PLAINTIFFS and the Class and made it difficult to  
17 calculate the unpaid rest period compensation due PLAINTIFFS and the Class.

18 66. As a result of the unlawful acts of Defendants, PLAINTIFFS and the Class have  
19 been deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of  
20 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§  
21 203, 226, 226.7, 512, 1194, and Wage Order 5, and others.

22 67. WHEREFORE, PLAINTIFFS and the Class request relief as described herein and  
23 below.

24 //

25 //

26 //

27 //

1 **FOURTH CLAIM FOR RELIEF**

2 **FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU**  
3 **THEREOF**

4 (CALIFORNIA LABOR CODE §§ 226.7, 512)

5 (AGAINST EMPLOYER DEFENDANTS)

6 68. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

7 69. PLAINTIFFS and, on information and belief, the Class were not afforded meal  
8 periods as required by California law, since they were routinely required to work five hours or  
9 more without a full, thirty minute, uninterrupted meal period, and they were not compensated for  
10 these missed meal periods.

11 70. California Labor Code § 226.7 states:

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

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

17 71. The applicable wage order issued by the Industrial Welfare Commission is Wage  
18 Order 5. Wage Order 5 states with regards to meal periods:

19 (A) No employer shall employ any person for a work period of more than five  
20 (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  
21 period may be waived by mutual consent of the employer and employee. Unless the  
employee is relieved of all duty during a 30-minute meal period, the meal period  
22 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 prevents an  
23 employee from being relieved of all duty and when by written agreement between  
the parties an on-the-job paid meal period is agreed to. The written agreement shall  
24 state that the employee may, in writing, revoke the agreement at any time.

25 (B) If an employer fails to provide an employee a meal period in accordance  
26 with 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 work  
27 day that the meal period is not provided.

28 A similar provision is contained at California Labor Code § 512.

1           72.     In this case, there was no mutual waiver of meal period and employees worked for  
2 periods of more than five hours without an off-duty meal period of at least 30 minutes. As noted  
3 above, Defendants violated California law by failing to provide meal periods mandated by Labor  
4 Code § 226.7 and the wage orders. As such, Defendants are liable for one hour of pay at the  
5 employee's regular rate of compensation for each workday that meal periods were not provided.

6           73.     As noted above, Defendants violated California law by failing to provide the meal  
7 and rest periods mandated by Labor Code § 226.7 and Wage Orders 5, and by failing to provide  
8 one hour pay at the employees' regular rate of compensation for each work day that the meal  
9 period was not provided.

10          74.     PLAINTIFFS and, on information and belief, the Class did not voluntarily or  
11 willfully waive meal periods. Any express or implied waivers obtained from PLAINTIFFS and the  
12 Class was not willfully obtained, was not voluntarily agreed to, was a condition of employment, or  
13 part of a contract of an unlawful adhesion.

14          75.     By failing to keep adequate time records required by sections 226 and 1174(d) of  
15 the Labor Code, Defendants have injured PLAINTIFFS and the CLASS and made it difficult to  
16 calculate the unpaid meal period compensation due PLAINTIFFS and the Class.

17          76.     As a result of the unlawful acts of Defendants, PLAINTIFFS and the Class have  
18 been deprived of premium wages in amounts to be determined at trial, and is entitled to recovery of  
19 such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§  
20 203, 226, 226.7, 512, 1194, and Wage Order 5.

21          77.     WHEREFORE, PLAINTIFFS and the Class request relief as described herein and  
22 below.

23            //

24            //

25            //

26            //

1 **FIFTH CLAIM FOR RELIEF**

2 **FAILURE TO INDEMNIFY EMPLOYEES FOR ALL NECESSARY EXPENDITURES OR**  
3 **LOSSES INCURRED**

4 (LABOR CODE § 2802)

5 (AGAINST EMPLOYER DEFENDANTS)

6 78. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

7 79. Labor Code § 2802 required Defendants to indemnify PLAINTIFFS and the Class  
8 for all necessary expenditures or losses incurred by these employees in direct consequence of the  
9 discharge of his or her duties.

10 80. PLAINTIFFS and the Class were required to provide their own cutlery, protective  
11 gear, supplies and/or personal vehicles necessary to perform their duties and/or maintained them  
12 without reimbursement by Defendants for cost incurred for said use.

13 81. Defendants failed to provide to PLAINTIFFS and the Class with all tools/cutlery  
14 protective gear, supplies and/or vehicles that were necessary to perform their duties as directed by  
15 Defendants and further failed to indemnify PLAINTIFFS and the Class for all necessary  
16 expenditures and losses incurred by PLAINTIFFS and the Class for the benefit of Defendants and  
17 to their detriment. As a result, PLAINTIFFS and the Class were required to supply all their own  
18 tools/cutlery protective gear, supplies and/or personal vehicles. Defendants did not provide all  
19 required all tools/cutlery protective gear, supplies and/or vehicles and did not reimburse  
20 PLAINTIFFS and the Class for said expenses.

21 82. As a direct and proximate cause of Defendants' failure to indemnify employees,  
22 PLAINTIFFS and the CLASS incurred out of pocket expenses and suffered a loss of wages in an  
23 amount to be proven at trial.

24 //

25 //

26 //

27 //

1 **SIXTH CLAIM FOR RELIEF**

2 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
3 **EMPLOYEE WAGE STATEMENT PROVISIONS**

4 (LABOR CODE §§ 226(b), 1174, 1175)

5 (AGAINST EMPLOYER DEFENDANTS)

6 83. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

7 84. California Labor Code Section 226(a) states:

8 Every employer shall, semimonthly or at the time of each payment of wages,  
9 furnish each of his or her employees, either as a detachable part of the check, draft,  
10 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

11 i) gross wages earned,

12 ii) total hours worked by the employee, except for any employee whose  
13 compensation is solely based on a salary and who is exempt from payment  
14 of overtime under subdivision (a) of Section 515 or any applicable order of  
the Industrial Welfare Commission,

15 iii) the number of piece-rate units earned and any applicable piece rate if  
16 the employee is paid on a piece-rate basis,

17 iv) all deductions, provided that all deductions made on written orders of  
the employee may be aggregated and shown as one item,

18 v) net wages earned,

19 vi) the inclusive dates of the period for which the employee is paid,

20 vii) the name of the employee and his or her social security number,  
21 except that by January 1, 2008, only the last four digits of his or her social  
22 security number or an employee identification number other than a social  
security number may be shown on the itemized statement,

23 viii) the name and address of the legal entity that is the employer, and

24 ix) all applicable hourly rates in effect during the pay period and the  
25 corresponding number of hours worked at each hourly rate by the employee.  
26 The deductions made from payments of wages shall be recorded in ink or  
27 other indelible form, properly dated, showing the month, day, and year, and  
28 a copy of the statement or a record of the deductions shall be kept on file by  
the employer for at least three years at the place of employment or at a  
central location within the State of California.

1           85. Defendants failed to provide “accurate itemized statements” to employees,  
2 including PLAINTIFFS and the Class, because the wage statements:

3           a. Falsely understated the gross wages earned, since the amount did not  
4 account for all hours worked; and

5           b. Omitted or falsely understated the total hours worked by PLAINTIFFS and  
6 the Class, by under-reporting or ignoring the total of hours actually worked, and  
7 because there was no system for employees to record hours contemporaneously as  
8 they began, ended and worked their shifts.

9 As a result, the wage statements also falsely understated the “number of hours worked at  
10 each hourly rate” and falsely stated the net wages earned.

11           86. California Labor Code § 226(e) and (g) provide for the remedy for the violations  
12 described above:

13           (e) An employee suffering injury as a result of a knowing and intentional failure by  
14 an employer to comply with subdivision (a) is entitled to recover the greater of all  
15 actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
16 occurs and one hundred dollars (\$100) per employee for each violation in a  
17 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars  
18 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

19           (g) An employee may also bring an action for injunctive relief to ensure compliance  
20 with this section, and is entitled to an award of costs and reasonable attorney's fees.

21           87. Section 1174 of the California Labor Code, and Section 7 of Wage Order 5, require  
22 EMPLOYER DEFENDANTS to maintain and preserve, in a centralized location, among other  
23 items, records showing the names and addresses of all employees employed, payroll records  
24 showing the hours worked daily by and the wages paid to its employees. The Wage Orders also  
25 require that the employer keep accurate information showing when each employee begins and ends  
26 each work period, meal periods, and total daily hours worked.” Defendants have created a uniform  
27 practice of knowingly and intentionally failing to comply with Labor Code § 1174. Defendants’  
28 failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175. When an  
employer fails to keep such records, employees may establish the hours worked solely by their  
testimony and the burden of overcoming such testimony shifts to the employer. *Hernandez v.*  
*Mendoza*, 199 Cal. App. 3d 721 (1988).

1           88. By failing to keep adequate time records required by §§ 226 and 1174 (d) of the  
2 Labor Code, Defendants have injured PLAINTIFFS and the Class and made it difficult to calculate  
3 the unpaid wages due, and PLAINTIFFS and the Class are entitled to up to \$4,000.00 in penalties.

4           89. WHEREFORE, PLAINTIFFS requests relief as described herein and below on  
5 behalf of the Class.

6                                   **SEVENTH CLAIM FOR RELIEF**

7           **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION OR RESIGNATION**  
8                                   **(CALIFORNIA LABOR CODE §§ 201, 202 & 203)**

9                                   **(AGAINST EMPLOYER DEFENDANTS)**

10           90. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

11           91. California Labor Code §§ 201 and 202 provide for immediate payment of all wages  
12 owed at termination of employment.

13           92. Defendants required PLAINTIFFS and the Class to work without compensating  
14 them for all wages as described in this complaint and failed to pay these wages at the termination  
15 of these employees. Consequently, Defendants have violated California Labor Code §§ 201 and/or  
16 202.

17           93. California Labor Code § 203 states:

18           If an employer willfully fails to pay, without abatement or reduction, in accordance  
19 with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is  
20 discharged or who quits, the wages of the employee shall continue as a penalty from  
21 the due date thereof at the same rate until paid or until an action therefor is  
22 commenced; but the wages shall not continue for more than 30 days. An employee  
23 who secretes or absents himself or herself to avoid payment to him or her, or who  
24 refuses to receive the payment when fully tendered to him or her, including any  
penalty then accrued under this section, is not entitled to any benefit under this  
section for the time during which he or she so avoids payment. Suit may be filed for  
these penalties at any time before the expiration of the statute of limitations on an  
action for the wages from which the penalties arise.

25           94. Defendants willfully failed to pay all wages due as the failure to pay was not  
26 inadvertent or accidental. As a result, PLAINTIFFS and the Class are entitled to 30 days' wages.  
27 "30 days wages" is calculated pursuant to California case law as 30 working days and not merely a  
28



month's wages.

95. In calculating 30 days wages pursuant to California Labor Code § 203, PLAINTIFFS and the Class are entitled to compensation for all forms of wages earned (even if not properly paid), including, but not limited to, compensation for unprovided rest periods and unprovided meal periods, compensation for work done at hourly rates below the minimum and overtime wages, and other compensation due but not received.

96. More than 30 working days have passed since PLAINTIFFS and many members of the Class have has left EMPLOYER DEFENDANTS' employ, and despite this, they have not received payment pursuant to Labor Code § 203. As a consequence of Defendants' willful conduct in not paying all earned wages, PLAINTIFFS and the Class are entitled to 30 days' wages as a penalty under Labor Code § 203 for failure to pay legal wages.

97. WHEREFORE, PLAINTIFFS and the Class seek the relief as described herein and below.

### **EIGHTH CLAIM FOR RELIEF**

## BREACH OF CONTRACT

(CALIFORNIA LABOR CODE §§ 223, 225, 226 & 206.5)

**(AGAINST EMPLOYER DEFENDANTS)**

96. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

97. The EMPLOYER DEFENDANTS entered into a variety of written or implied contractual wage terms with PLAINTIFFS and members of the Class whereby EMPLOYER DEFENDANTS would pay hourly rates of pay. The written parts of employment contract are contained on the wage statements for employees and other payroll and/or human resource documents, which must meet or exceed the requirements of the City of Oakland's minimum wage ordinance.

98. EMPLOYER DEFENDANTS breached the written contracts of employment into which they entered with the PLAINTIFFS and the Class members by failing to comply with the wage rate promised.

99. The PLAINTIFFS and the Class were at all times ready, willing, and able to, and in fact, comply with the terms of the employment contract.

100. As a direct consequence of EMPLOYER DEFENDANT'S breach of the employment contract, PLAINTIFFS were injured.

101. EMPLOYER DEFENDANTS are therefore liable to PLAINTIFFS and the Class for actual, incidental, contractual, liquidated, and consequential damages in an amount to be determined at trial.

102. WHEREFORE, PLAINTIFFS and the Class are entitled to actual, incidental, and consequential damages.

### **NINTH CLAIM FOR RELIEF**

**VIOLATION OF UNFAIR COMPETITION LAW**  
**(CALIFORNIA BUS. & PROF. CODE §§ 17200 *ET SEQ.*)**

(AGAINST EMPLOYER DEFENDANTS)

103. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

104. On information and belief, by their policies described above, Defendants engaged in unlawful activity prohibited by Business and Professions Code §§ 17200 et seq. The actions of Defendants as alleged within this Complaint, constitute unlawful and unfair business practices, within the meaning of Business and Professions Code §§ 17200 et seq and have suffered injury and have lost money or property as a result of Defendants failure to comply with well established labor laws.

105. As a result of their unlawful acts, Defendants have reaped and continue to reap unfair benefits and unlawful profits at the expense of PLAINTIFFS and the Class. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to PLAINTIFFS and the Class the wrongfully withheld wages pursuant to Business and Professions Code § 17203. PLAINTIFFS are informed and believe and thereon allege that Defendants are unjustly enriched through these unlawful practices.

106. The unlawful conduct alleged herein is continuing, and there is no indication that Defendants will not continue such activity in the future. PLAINTIFFS allege that if Defendants are not enjoined from the conduct set forth in this Complaint, DEFENDANTS will continue these violations.

107. PLAINTIFFS further request that the court issue a preliminary and permanent injunction requiring Defendants to comply with the recording keeping requirements under California Labor Laws and providing required safety equipment.

108. WHEREFORE, PLAINTIFFS for themselves and the Class they seek to represent request injunctive, declaratory, and restitutionary relief as described herein and below.

### TENTH CLAIM FOR RELIEF

**VIOLATIONS OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT  
(CALIFORNIA LABOR CODE §§ 2698 *ET SEQ.*)**

**(AGAINST ALL DEFENDANTS)**

109. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

110. PLAINTIFFS will bring this claim for themselves and other current and former employees, as expressly authorized by Labor Code §§ 2699 et seq. PAGA is an enforcement action that empowers an aggrieved employee to seek penalties on behalf of themselves, current and former employees and the State, without the need to certify a class. For purposes of this claim only, therefore, PLAINTIFFS will bring this claim for themselves and other current and former employees and need not comply with Class Action Certification.

111. PLAINTIFFS are aggrieved employees as defined in Labor Code §2699(a). They will bring this cause on behalf of themselves and other current or former aggrieved employees affected by the labor law violations alleged in this complaint.

112. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 will be satisfied by written notice by certified mail to all Defendants and to the Labor and Workforce Development Agency, detailing the Labor Code and IWC Wage Order violations averred herein. PLAINTIFFS will amend their Complaint should the LWDA refuse to timely investigate these

1 violations.

2 113. PLAINTIFFS will seek civil penalties as provided under applicable Labor Code  
3 sections for violations of the Labor Code alleged herein pursuant to Labor Code § 2699(a). To the  
4 extent that any violation alleged herein does not carry a penalty, PLAINTIFFS will seek civil  
5 penalties pursuant to Labor Code § 2699(f) for PLAINTIFFS, other current or former employees  
6 and the State for violations of those sections.

7 114. Labor Code § 2699(f) provides:

8 For all provisions of this code except those for which a civil penalty is  
9 specifically provided, there is established a civil penalty for a violation  
10 of these provisions, as follows: . . . (2) If, at the time of the alleged  
11 violation, the person employs one or more employees, the civil penalty is  
one hundred dollars (\$100) for each aggrieved employee per pay period  
for the initial violation and two hundred dollars (\$200) for each  
aggrieved employee per pay period for each subsequent violation.

12 115. PLAINTIFFS will seek penalties due from all Defendants on behalf of themselves,  
13 other aggrieved employees and the State, as provided by Labor Code § 2699(i), including but not  
14 limited to, penalties due pursuant to Labor Code § 558(a) as a result of Defendants' violation of the  
15 provisions of the Labor Code and Wage Order 5.

16 116. All Defendants are liable to PLAINTIFFS and "other current or former employees  
17 and the state" for the civil penalties arising from the violations alleged in this Complaint.  
18 PLAINTIFFS are also entitled to an award of attorneys' fees and costs as set forth below.

19 117. PLAINTIFFS, and on behalf of themselves and other current or former employees,  
20 request relief as described below.

21  
22 **VII. PRAYER**

23 118. WHEREFORE, PLAINTIFFS pray for judgment for PLAINTIFFS and the Class as  
24 follows:

- 25 1. For compensatory damages in an amount according to proof with interest thereon;  
26 2. For economic and/or special damages in an amount according to proof with interest  
27 thereon;  
28 3. For a declaratory judgment that Defendants violated the rights of PLAINTIFFS and

1 the Class under the California Labor Code, and applicable wage orders as set forth in  
2 the preceding paragraphs;

3 4. For an award to PLAINTIFFS and the Class of statutory damages or, in the  
4 alternative, actual damages for Defendants' violations of the California Labor Code;

5 5. For an award to PLAINTIFFS and the Class for unpaid minimum wages for  
6 violations of the City of Oakland's Ordinance 5.92.020.

7 6. That Defendants be found to have engaged in unfair competition in violation of  
8 California Business and Professions Code §§ 17200 *et seq.*;

9 7. That DEFENDANT EMPLOYERS be ordered and enjoined to make restitution to  
10 PLAINTIFFS and the Class due to their unfair competition, including restitutionary  
11 disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation,  
12 and benefits, pursuant to California Business and Professions Code §§ 17203 and  
13 17204;

14 8. That DEFENDANT EMPLOYERS be enjoined from continuing the unlawful  
15 course of conduct alleged herein;

16 9. For premium pay and statutory penalties pursuant to Labor Code § 203, excluding  
17 any penalties available solely through the procedures detailed in Labor Code §§ 2698 *et*  
18 *seq.*;

19 10. For premium wages pursuant to Labor Code §§ 226 and 226.7;

20 11. For minimum wages pursuant to Labor Code §§ 1197, 1194(a), 1194.2, and the  
21 Wage Orders;

22 12. For liquidated damages pursuant to the Labor Code § 1194.2;

23 13. For penalties pursuant to Labor Code § 226.

24 14. For penalties pursuant to City of Oakland Ordinance 5.92.050.

25 15. For attorneys' fees, interests, and costs of suit under the California Labor Code  
26 including §§ 226, 1194, and pursuant to the private attorney provisions of California  
27 Code of Civil Procedure § 1021.5.

28 16. For unpaid wages, liquidated damages, penalties and other relief as provided by the

1 California Labor Code.

2 17. For such other and further relief as the Court deems just and proper excluding any  
3 penalties available solely through the procedures detailed in Labor Code §§ 2698 *et seq.*

4 18. For penalties for the State, Plaintiffs and other current or former employees  
5 pursuant to the Labor Code Private Attorney General Act.

6  
7 **VI. DEMAND FOR JURY TRIAL**

8 119. PLAINTIFFS hereby demand trial of their claims and of the Class by jury to the  
9 extent authorized by law.

10  
11 Dated: April 1, 2016

MALLISON & MARTINEZ

12  
13  
14 By: 

Hector R. Martinez, Esq.  
Attorneys for Plaintiffs