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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 DUANE WATERS, DEBRA TURNER,)
15 and RUDY FAJARDO, on behalf of)
16 themselves, all others similarly situated)
17 and the general public,)

18 Plaintiffs,)

19 vs.)

20 AT&T SERVICES, INC. (formerly SBC)
21 Services, Inc.) and DOES 1 through 10;)

22 Defendants.)
23)
24)
25)
26)
27)
28)

Case No: CV 09-3983 BZ

CLASS ACTION
FIRST AMENDED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF

1. FAILURE TO PAY
OVERTIME COMPENSATION
(CAL. LABOR CODE § 1194 and
THE F.L.S.A.)

2. FAILURE TO PROVIDE
MEAL AND REST PERIODS
(CAL. LABOR CODE § 226.7)

3. FAILURE TO PROVIDE
ACCURATE ITEMIZED
STATEMENTS (CAL. LABOR
CODE § 226)

FAXED

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 -) **4. WAITING TIME PENALTIES**
 -) **(CAL. LABOR. CODE § 203)**
 -)
 -) **5. CONVERSION (CAL. CIVIL**
 -) **CODE § 3336, § 3294)**
 -)
 -) **6. UNFAIR BUSINESS**
 -) **PRACTICES (CALIFORNIA**
 -) **BUSINESS AND**
 -) **PROFESSIONS CODE § 17200**
 -) **ET SEQ.)**
 -)
-
- DEMAND FOR JURY TRIAL**

PLAINTIFFS DUANE WATERS, DEBRA TURNER and RUDY
 FAJARDO ("PLAINTIFFS"), as individuals, and on behalf of themselves, all
 others similarly situated, and the general public, complains and alleges on
 information and belief the following against AT&T SERVICES, INC. (formerly
 SBC Services, Inc.); and Does 1 through 10 (collectively "DEFENDANTS").

INTRODUCTION

1. This case arises out of DEFENDANTS' failure to pay overtime
 compensation and failure to provide rest and meal periods to certain California
 Information-Technology (IT) employees of Defendant AT&T Services, Inc.,
 (formerly SBC Services, Inc.), and Does 1 through 10 (collectively referred to as
 "DEFENDANTS"). These IT employees primarily performed non-exempt
 functions for the DEFENDANTS and were not paid overtime compensation during
 the Class Period, which is defined as four years prior to the date of the filing of this
 complaint, through the date of trial.

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1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over Plaintiffs' claims pursuant to the
3 Class Action Fairness Act of 2005, which amended 28 U.S.C. § 1332, because (a)
4 one or more Defendants are not a citizen of this state, but do conduct business in
5 good standing within the State of California on a regular basis; (b) Plaintiffs are
6 citizens of California; (c) the proposed class members number at least 100; and (d)
7 the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.
8

9 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) in
10 that the unlawful actions challenged herein occurred in the Northern District.
11

12 **PARTIES**

13 4. PLAINTIFFS DUANE WATERS, DEBRA TURNER and RUDY
14 FAJARDO ("PLAINTIFFS") at all relevant times were non- exempt employees of
15 DEFENDANTS. PLAINTIFFS' job duties consisted primarily of providing
16 computer support, trouble-shooting, and technical services to DEFENDANTS.
17 PLAINTIFFS performed all obligations as required during employment.
18

19 5. PLAINTIFF DUANE WATERS is, and at all relevant times was, a
20 citizen of the State of California. PLAINTIFF was employed by DEFENDANTS,
21 in San Ramon, California, from approximately 1996 through approximately
22 February 2008 as a Senior Analyst (also known as a Sr. Analyst) .
23

24 6. PLAINTIFF DEBRA TURNER is, and at all relevant times was, a
25 citizen of the State of California. PLAINTIFF was employed by DEFENDANTS,
26 in San Diego, California, as a Senior Analyst (also known as a Sr. Analyst or
27 Senior Analyst-IT Services) from approximately 2004 through May 2006.
28

1 7. PLAINTIFF RUDY FAJARDO, is, and at all relevant times was, a
2 citizen of the State of California. PLAINTIFF RUDY FAJARDO was employed
3 by DEFENDANTS, in San Diego County, California as Senior Database
4 Administrator (also know as Sr. Database Administrator) from approximately 1996
5 until approximately November 30, 2007.

6
7 8. PLAINTIFFS are informed and believe and thereon allege that
8 PLAINTIFFS and all members of Plaintiffs' class were non-exempt employees of
9 Defendants, who performed substantially similar job duties, which consisted
10 primarily of providing computer support, trouble shooting and technical services
11 to DEFENDANTS Despite the fact that PLAINTIFFS and other class members
12 were non-exempt employees who performed similar job duties, namely computer
13 support, trouble shooting and technical services, DEFENDANTS provided
14 PLAINTIFFS and other similarly situated employees with various job titles in
15 order to make it appear that they were exempt from California's overtime laws so as
16 to avoid paying PLAINTIFFS and other class members wages due to non-exempt
17 employees under California law.

18
19 9. DEFENDANTS AT&T SERVICES, INC. (formerly SBC Services,
20 Inc. PacBell, Cingular, Southwest Bell and/or Yellowpages.com); and Does 1
21 through 10, are all corporations or other business entities which are doing business
22 in California or formally did business in California. AT&T SERVICES, INC., is
23 the primary defendant in this action and, has its principal place of business in the
24 state of Texas, and is incorporated in the state of Delaware.

25
26 10. At all times mentioned herein, DEFENDANTS, and each of them, were
27 the agents, representatives, employees, successors, assigns, parents, subsidiaries
28 and/or affiliates, each of the other, and at all times pertinent hereto were acting

1 within the course and scope of their authority as such agents, representatives,
2 employees, successors, assigns, parents, subsidiaries and/or affiliates.

3
4 **CLASS ACTION ALLEGATIONS**

5 11. PLAINTIFFS bring this action on behalf of themselves and all others
6 similarly situated as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and
7 23(b)(3), on behalf of the following class (herein referred to as the "PLAINTIFF
8 CLASS") The class that PLAINTIFFS seek to represent (herein referred to as
9 "PLAINTIFF CLASS") is composed of and defined as follows:

10 The class includes, without limitation, all misclassified employees of
11 DEFENDANTS who at any time within four years of the date of the filing of this
12 complaint performed similar job duties as PLAINTIFFS and held the following
13 job titles: Sr. Analyst, Senior Analyst, Senior IT Analyst, and Senior Analyst-IT
14 Services California as Senior Database Administrator, Sr. Database Administrator
15 (and other similar job titles) who did not receive overtime pay to which they were
16 entitled pursuant to the California Labor Code, the California Industrial Welfare
17 Commission's ("IWC") Wage Orders and all other applicable Employment Laws
18 and Regulations.

19
20 12. The members of the class are so numerous that joinder of all members
21 would be unfeasible and not practicable. The membership of the entire class is
22 unknown to PLAINTIFFS at this time; however, it is estimated that the entire class
23 is greater than 100 individuals, but the identity of such membership is readily
24 ascertainable via inspection of the personnel records and other documents
25 maintained by DEFENDANTS.

26
27 13. There are common questions of law and fact as to the class which
28 predominate over questions affecting only individual members including, without,

1 limitation:

2 A. Whether DEFENDANTS denied the PLAINTIFF CLASS
3 overtime pay to which they were entitled pursuant to the California Labor Code,
4 the California Industrial Welfare Commission's ("IWC") Wage Orders, and all
5 other applicable Employment Laws and Regulations.

6 B. Whether DEFENDANTS denied the PLAINTIFF CLASS meal
7 and rest breaks to which they were entitled by law and failed to compensate the
8 PLAINTIFF CLASS for missed meal and rest breaks;

9 C. Whether DEFENDANTS failed to provide PLAINTIFFS and
10 members of the PLAINTIFF CLASS with accurate itemized statements;

11 D. Whether DEFENDANTS engaged in unfair business practices;

12 E. Whether DEFENDANTS acted with, malice, oppression and
13 fraud thereby justifying the award of punitive and exemplary damages.

14 F. Whether DEFENDANTS misclassified some class members as
15 exempt employees and attempted to cover this up by engaging in a scheme to
16 provide them with changing and misleading job titles, even though class members
17 performed essentially similar job duties.

18 G. The effect upon and the extent of damages suffered by the
19 PLAINTIFF CLASS and the appropriate amount of compensation.

20

21 14. The claims of PLAINTIFFS pled as class action claims are typical of
22 the claims of all members of the class as they arise out of the same course of
23 conduct and are predicated on the same violation(s) of the law. PLAINTIFFS, as
24 representative parties, will fairly and adequately protect the interests of the class
25 by vigorously pursuing this suit through their attorneys who are skilled and
26 experienced in handling matters of this type.

27

28 15. The nature of this action and the nature of the laws available to the

1 PLAINTIFF CLASS make use of the class action format a particularly efficient
2 and appropriate procedure to afford relief to the PLAINTIFF CLASS. Further,
3 this case involves a corporate employer and a large number of individual
4 employees possessing claims with common issues of law and fact. If each
5 employee were required to file an individual lawsuit, the corporate defendants
6 would necessarily gain an unconscionable advantage since it would be able to
7 exploit and overwhelm the limited resources of each individual plaintiff with its
8 vastly superior financial and legal resources. Requiring each class member to
9 pursue an individual remedy would also discourage the assertion of lawful claims
10 by employees who would be disinclined to pursue an action against their present
11 and/or former employer for an appreciable and justifiable fear of retaliation and
12 permanent damage to their careers at present and/or subsequent employment.
13 Proof of a common business practice or factual pattern, of which the named
14 plaintiff experienced, is representative of the class mentioned herein and will
15 establish the right of each of the members of the class to recovery on the claims
16 alleged herein.

17

18 16. The prosecution of separate actions by the individual class members,
19 even if possible, would create: (a) a substantial risk of inconvenient or varying
20 verdicts or adjudications with respect to the individual class members against the
21 defendants herein; and/or (b) legal determinations with respect to individual class
22 members which would, as a practical matter, be dispositive of the other class
23 members not parties to the adjudications or which would substantially impair or
24 impede the ability of class members to protect their interests. Further, the claims
25 of the individual members of the class are not sufficiently large to warrant
26 vigorous individual prosecution considering all of the concomitant costs and
27 expenses attending thereto. PLAINTIFFS are also unaware of any difficulties that
28 are likely to be encountered in the management of this action that would preclude

1 its maintenance as a class action.

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FACTS COMMON TO ALL CAUSES OF ACTION

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17. PLAINTIFFS were non-exempt employees of DEFENDANTS. DEFENDANTS routinely required PLAINTIFFS to work more than eight (8) hours per day, twelve (12) hours per day and/or forty (40) hours per week.

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However, PLAINTIFFS did not receive overtime compensation for the hours she worked in excess of eight (8) hours per day, twelve (12) hours per day and/or forty (40) hours per week.

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18. In addition, PLAINTIFFS were not provided with an uninterrupted, work-free 30-minute meal periods for shifts in excess of five (5) hours and were not compensated for missed meal periods. DEFENDANTS also failed to provide PLAINTIFFS with rest breaks for shifts in excess of four (4) hours throughout her employment with DEFENDANTS.

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17

19. PLAINTIFF are informed and believe and thereon allege that the PLAINTIFF CLASS was subjected to the same unlawful practices as PLAINTIFFS. Like PLAINTIFFS, DEFENDANTS routinely required members of the PLAINTIFF CLASS to work more than eight (8) hours per day, twelve (12) hours per day, and/or forty (40) hours per week. However, members of the PLAINTIFF CLASS did not receive the overtime wages that they earned.

23

PLAINTIFF is informed and believe and thereon allege that the failure of DEFENDANTS to pay PLAINTIFFS and the PLAINTIFF CLASS for overtime work was willful, purposeful, and unlawful and done in accordance with the policies and practices of DEFENDANTS' operations. In addition, DEFENDANTS failed to provide PLAINTIFFS and members of the PLAINTIFF CLASS with accurate itemized statements as required by Cal. Labor Code § 226.

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1 20. PLAINTIFFS are further informed and believes and thereon allege
2 that members of the PLAINTIFF CLASS were also not provided with
3 uninterrupted, work-free 30-minute meal periods for shifts in excess of five (5)
4 hours and were not compensated for missed meal periods. PLAINTIFFS are
5 informed and believe and thereon alleges that the failure of DEFENDANTS to
6 provide PLAINTIFFS and the PLAINTIFF CLASS with uninterrupted, work-free
7 30-minute meal periods for shifts in excess of five (5) hours was willful,
8 purposeful, and unlawful and done in accordance with the policies and practices of
9 DEFENDANTS' operations.

10
11 21. In addition, PLAINTIFFS are informed and believe and thereon
12 allege that members of the PLAINTIFF CLASS were also not provided with rest
13 breaks for shifts in excess of four (4) hours. PLAINTIFFS are informed and
14 believe and thereon allege that the failure of DEFENDANTS to provide
15 PLAINTIFFS and the PLAINTIFF CLASS with rest breaks for shifts in excess of
16 four (4) hours was willful, purposeful, and unlawful and done in accordance with
17 the policies and practices of DEFENDANTS' operations.

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20 **FIRST CAUSE OF ACTION**

21 FAILURE TO PAY OVERTIME COMPENSATION (CALIFORNIA LABOR
22 CODE SECTION 1194 and SECTION 203 OF THE FAIR
23 LABOR STANDARDS ACT)

24 By PLAINTIFFS in their individual capacities and in their capacities as a
25 representatives of all similarly situated members of the PLAINTIFF CLASS
26 against all DEFENDANTS.

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1 22. PLAINTIFF realleges and incorporates, by reference, as though fully
2 set forth herein, the allegations contained in paragraphs 1 to 21.

3
4 23. DEFENDANTS routinely required PLAINTIFF and members of the
5 PLAINTIFF CLASS to work more than eight (8) hours per day, twelve (12) hours
6 per day, and/or forty (40) hours per week.

7
8 24. DEFENDANTS failed to fully compensate PLAINTIFF and members
9 of the PLAINTIFF CLASS for all overtime wages they earned.

10
11 25. PLAINTIFFS are informed and believe, and thereon allege that the
12 failure of DEFENDANTS to fully compensate PLAINTIFFS and the PLAINTIFF
13 CLASS for overtime work was willful, purposeful, and unlawful and done in
14 accordance with the policies and practices of DEFENDANTS' operations.

15
16 26. As a proximate cause of the aforementioned violations, PLAINTIFFS
17 and the PLAINTIFF CLASS have been damaged in an amount according to proof
18 at time of trial, but in an amount in excess of the jurisdiction of this Court.
19 PLAINTIFFS and the PLAINTIFF CLASS are entitled to recover the unpaid
20 balance of wages owed, penalties, including penalties available pursuant to
21 California Labor Code Section 558, plus interest, reasonable attorney fees and
22 costs of suit according to the mandate of California Labor Code, §1194, et. seq.

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SECOND CAUSE OF ACTION

**FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION
(CALIFORNIA LABOR CODE SECTION 226.7 AND 512)**

By PLAINTIFFS in their individual capacities and in their capacities as a representatives of all similarly situated members of the PLAINTIFF CLASS against all DEFENDANTS.

27. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth herein, the allegations contained in paragraphs 1 to 26.

28. DEFENDANTS failed to provide PLAINTIFFS and members of the PLAINTIFF CLASS with uninterrupted, work-free 30-minute meal periods for shifts in excess of five (5) hours worked and to compensate them for these missed meal periods as required by law.

29. DEFENDANTS, throughout PLAINTIFFS' employment with DEFENDANTS, failed to give PLAINTIFFS breaks for shifts in excess of four (4) hours as required by law and failed to compensate her for missed rest breaks. DEFENDANTS also failed to give members of the PLAINTIFF CLASS breaks for shifts in excess of four (4) hours as required by law and failed to compensate them for missed rest breaks.

30. PLAINTIFFS are informed and believe, and thereon allege that the failure of DEFENDANTS to provide meal and rest breaks and to compensate PLAINTIFFS and the PLAINTIFF CLASS for these missed meal and rest breaks was willful, purposeful, and unlawful and done in accordance with the policies and practices of DEFENDANTS' operations.

1 records in order to conceal its unlawful payment practices. As a result,
2 PLAINTIFFS and members of the PLAINTIFF CLASS are entitled to recover the
3 greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per employee for each
5 violation in a subsequent pay period, not exceeding an aggregate penalty of four
6 thousand dollars (\$4,000), and are entitled to an award of costs and reasonable
7 attorney fees.

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FOURTH CAUSE OF ACTION

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(WAITING TIME PENALTIES PURSUANT TO CALIFORNIA

12

LABOR CODE § 203)

13

By PLAINTIFFS in their individual capacities and in their capacities as a
14 representatives of all similarly situated members of the PLAINTIFF CLASS
15 against all DEFENDANTS.

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35. PLAINTIFFS reallege and incorporate, by reference, as though fully
18 set forth herein, the allegations contained in paragraphs 1 to 34.

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36. Pursuant to California Labor Code § 201, if an employer discharges
21 an employee, the wages earned and unpaid at the time of the discharge are due and
22 payable immediately. Pursuant to California Labor Code § 202, if an employee
23 quits her employment, the wages earned and unpaid at the time of the discharge
24 are due and payable within 72 hours.

25

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37. PLAINTIFFS are informed and believe and thereon allege that
27 members of the PLAINTIFF CLASS have resigned or were terminated from their
28 employment with DEFENDANTS and have not received the overtime

1 compensation and other wages they rightfully earned.

2

3 38. DEFENDANTS, and each of them, willfully refused and continue to
4 refuse to pay members of the PLAINTIFF CLASS all wages earned, including
5 overtime and compensation for missed meal and rest breaks, in a timely manner, as
6 required by California Labor Code § 203. PLAINTIFFS therefore request
7 restitution and penalties as provided by California Labor Code § 203.

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FIFTH CAUSE OF ACTION

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CONVERSION (CALIFORNIA CIVIL CODE SECTIONS 3336 AND 3294)

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By PLAINTIFFS in their individual capacities and in their capacities as a
13 representatives of all similarly situated members of the PLAINTIFF CLASS
14 against all DEFENDANTS.

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16 39. PLAINTIFFS reallege and incorporate, by reference, as though fully
17 set forth herein, the allegations contained in paragraphs 1 to 38.

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19 40. As alleged above, DEFENDANTS wrongfully withheld earned wages
20 from PLAINTIFFS and members of the PLAINTIFF CLASS. In particular,
21 DEFENDANTS failed to pay PLAINTIFFS and members of the PLAINTIFF
22 CLASS all overtime wages they earned and failed to compensate them for missed
23 meal and rest breaks and other compensation owed to pursuant to the applicable
24 Employment Laws and Regulations.

25

26 41. At all relevant times, DEFENDANTS had and continue to have a
27 legal obligation imposed by statute to pay PLAINTIFFS and members of the
28 PLAINTIFF CLASS all earned wages and other compensation due to them. Such

1 wages and compensation belonged to PLAINTIFFS and members of the
2 PLAINTIFF CLASS at the time the labor and services were provided to
3 DEFENDANTS, and accordingly, such wages and compensation are the property
4 of PLAINTIFFS and members of the PLAINTIFF CLASS, not DEFENDANTS.

5
6 42. DEFENDANTS knowingly and intentionally failed to pay
7 PLAINTIFFS and members of the PLAINTIFF CLASS all overtime compensation
8 for overtime hours worked, knowingly and intentionally failed to compensate
9 PLAINTIFFS and members of the PLAINTIFF CLASS for missed meal and rest
10 breaks, and knowingly and intentionally failed to provide other compensation due
11 to PLAINTIFFS and members of the PLAINTIFF CLASS. Instead,
12 DEFENDANTS converted PLAINTIFFS' and members of the PLAINTIFF
13 CLASS' rightfully earned wages and converted them to DEFENDANTS' own use
14 and benefit.

15
16 43. PLAINTIFFS and members of the PLAINTIFF CLASS have been
17 injured by DEFENDANTS' intentional conversion of such wages and
18 compensation. PLAINTIFFS and the PLAINTIFF CLASS are entitled to
19 immediate possession of all amounts converted by DEFENDANTS, with interest,
20 as well as any and all profits that DEFENDANTS acquired by their unlawful
21 conversion.

22
23 44. DEFENDANTS' actions constituting conversion were oppressive,
24 malicious, and fraudulent, and were concealed by DEFENDANTS, and each of
25 them, from PLAINTIFFS and PLAINTIFF CLASS as hereinbefore alleged.
26 PLAINTIFF and members of the PLAINTIFF CLASS have been injured by
27 DEFENDANTS' oppressive, malicious, intentional and fraudulent actions,
28 entitling PLAINTIFFS and the PLAINTIFF CLASS to punitive and exemplary

1 damages.

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SIXTH CAUSE OF ACTION

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UNFAIR COMPETITION AND BUSINESS PRACTICES

5

(CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.)

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By PLAINTIFFS in their individual capacities and in their capacities as a
representatives of all similarly situated members of the PLAINTIFF CLASS

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against all DEFENDANTS.

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45. PLAINTIFFS reallege and incorporate, by reference, as though fully
set forth herein, the allegations contained in paragraphs 1 to 43.

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46. DEFENDANTS' violations of the Employment Laws and
Regulations, as alleged herein, include: (1) DEFENDANTS' failure and refusal to
pay all overtime wages earned by PLAINTIFFS and the PLAINTIFF CLASS
pursuant to DEFENDANTS' illegal pay practices described above; (2)
DEFENDANTS' failure to provide meal and rest breaks to PLAINTIFFS and
members of the PLAINTIFF CLASS and to compensate them for missed meal and
rest breaks; (3) DEFENDANTS' willful and deliberate failure to provide accurate
itemized statements; (4) DEFENDANTS' failure to pay wages due to
PLAINTIFFS in a timely manner upon their termination or resignation; (5) and
DEFENDANTS' wrongful withholding and conversion of wages and
compensation due to PLAINTIFFS and the PLAINTIFF CLASS. The
aforementioned violations constitute unfair business practices in violation of the
Unfair Competition Law, California Business & Professions Code Section 17200,
et seq.

47. As a result of DEFENDANTS' unfair business practices,

1 DEFENDANTS have reaped unfair benefits and illegal profits at the expense of
2 PLAINTIFFS, the PLAINTIFF CLASS and members of the public.
3 DEFENDANTS should be made to disgorge their ill-gotten gains and restore such
4 monies to PLAINTIFFS and the PLAINTIFF CLASS.

5
6 48. DEFENDANTS' unfair business practices entitle PLAINTIFFS and
7 the PLAINTIFF CLASS to seek preliminary and permanent injunctive relief,
8 including but not limited to, orders that the DEFENDANTS account for, disgorge
9 and restore to PLAINTIFFS and the PLAINTIFF CLASS the compensation
10 unlawfully withheld from, together with interest thereon, as well as costs, and
11 reasonable attorney fees pursuant to statute including Code of Civil Procedure
12 section 1021.5.

13
14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, PLAINTIFFS pray judgment as follows:

- 16 1. That the Court determine that Causes of Action 1, 2, 3, 4, 5 and 6
17 may be maintained as a class action;
- 18 2. For injunctive relief to stop DEFENDANTS' illegal practices relating
19 to the payment of overtime wages as described above;
- 20 3. For general and compensatory damages, according to proof;
- 21 4. For restitution of all monies due to PLAINTIFFS and the PLAINTIFF
22 CLASS and disgorgement of profits from the unlawful business
23 practices of DEFENDANTS;
- 24 5. For waiting time penalties pursuant to California Labor Code § 203;
- 25 6. For penalties pursuant to California Labor Code § 226, 558, and all
26 other applicable Labor Code Sections, Industrial Wage Orders and/or
27 Employment Laws and Regulations;
- 28 7. For interest accrued to date;

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- 8. For costs of the suit incurred herein;
- 9. For loss of earnings, according to proof;
- 10. For punitive damages and exemplary damages, according to proof;
- 11. For attorney fees and costs pursuant to California Labor Code § 226, and 1194; Cal. Code Civ. Pro. § 1021.5 and;
- 12. For such other and further relief that the Court may deem just and proper.

DATED: September 16, 2009

SCHONBRUN DESIMONE SEPLow
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LAW OFFICES OF THOMAS FALVEY



V. James DeSimone
Michael D. Seplow
Michael Morrison
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

PLAINTIFFS and members of the PLAINTIFF CLASS hereby demand a trial by jury on all issues so triable.

DATED: September 16, 2009

SCHONBRUN DESIMONE SEPLow
HARRIS & HOFFMAN LLP

LAW OFFICES OF THOMAS FALVEY



V. James DeSimone
Michael D. Seplow
Michael Morrison

Attorneys for Plaintiffs